

1 Special Tribunal for Lebanon
2 In the case of The Prosecutor v. Ayyash, Badreddine, Oneissi, and Sabra
3 STL-11-01
4 Presiding Judge David Re, Judge Janet Nosworthy,
5 Judge Micheline Braidi, and Judge Walid Akoum - Trial Chamber
6 Thursday, 9 January 2014 --- [Pre-Trial Conference]
7 [Open Session]
8 --- Upon commencing at 10.41 a.m.

9 PRESIDING JUDGE RE: Good morning, everyone.

10 Can you please call the case, Madam Registrar?

11 THE REGISTRAR: The Special Tribunal for Lebanon is sitting in an
12 open session for Pre-Trial Conference in the case of the Prosecutor
13 versus Ayyash, Badreddine, Oneissi, and Sabra, case number STL-11-01.

14 PRESIDING JUDGE RE: Good morning to everyone. This is a
15 Pre-Trial Conference in anticipation of the opening of the trial next
16 week. Can we please have appearances, starting with the Prosecutor?

17 MR. MILNE: Good morning, Your Honours. Alexander Milne on
18 behalf of the Office of the Prosecutor, together with my learned friend,
19 Mr. Graeme Cameron; my friend, Ms. Susan Grogan; and my learned friend
20 Skye Winner.

21 PRESIDING JUDGE RE: For the Defence. I understand Mr. Hannis is
22 appearing in the Ayyash case; is that correct?

23 MR. HANNIS: Thank you, Your Honour. Yes, I am. Mr. O'Sullivan
24 and Mr. Aoun could not be here today. I've recently be appointed
25 co-counsel and with your permission I would like to speak for the Ayyash

1 Defence team. I'm here, Tom Hannis, appearing with Chad Mair on my
2 right; Jason Antley on my left; and Deidre Montgomery for the
3 Ayyash Defence. Thank you.

4 PRESIDING JUDGE RE: We understand you have been appointed as
5 co-counsel but not yet sworn in. We congratulate you on your appointment
6 and welcome you to the proceedings and of course we give you the right of
7 audience. We understand you will be sworn in next Wednesday with other
8 co-counsel.

9 MR. HANNIS: That's correct, Your Honour. Thank you very much.
10 I'm pleased to be here.

11 MR. KORKMAZ: [Interpretation] My name is Antoine Korkmaz. I
12 represent the Defence and the interests or rights and interests of
13 Mr. Badreddine. I'm assisted by my co-counsel, Iain Edwards, and my two
14 colleagues, Pauline Baranes and Sarah Codde. I will take this
15 opportunity to ask your leave because Mr. Iain Edwards hasn't yet made
16 the oath and he will be making one of two decisions -- one or two answers
17 to provide in terms of the proceedings, matters of the proceedings, if
18 you can get your leave for him to address the Court. Thank you very
19 much.

20 PRESIDING JUDGE RE: I welcome your new colleague formally to the
21 proceedings in the same manner as Mr. Hannis.

22 Do you have news for us, Mr. Young?

23 MR. YOUNG: Your Honour, I appear, as Your Honour knows, for
24 Mr. Assad Sabra, along with Mr. Geoffrey Roberts who is soon to be sworn
25 in next week as my second co-counsel. I am assisted today, Your Honours,

1 by Mr. Julien Maton who is the assistant case manager. Thank you.

2 PRESIDING JUDGE RE: Slightly out of order.

3 MR. HASSAN: [Interpretation] Good morning, Your Honour. I am
4 Yasser Hassan. I represent the interests of Mr. Oneissi. I'm assisted
5 by Mr. Philippe Larochelle, Maud Sarlieve, and Daniel Mburu. We
6 represent the interests of Mr. Oneissi, and I would like also to
7 introduce my colleague, Philippe Larochelle, who will be sworn in next
8 week and I would like to seek your authorization so that he can assist
9 and attend to this meeting.

10 PRESIDING JUDGE RE: As with Mr. Roberts and Mr. Hannis, we
11 welcome Mr. Larochelle to the proceedings and of course grant him the
12 right of audience and anticipated swearing in next Wednesday.

13 The Defence Office, is there anyone for the -- head of the
14 Defence Office, Mr. Roux?

15 MR. ROUX: [Interpretation] Thank you, Your Honour. Good morning,
16 ladies and gentlemen of the Court. The Defence Office today is made up
17 of Mrs. Paula Lynch, case manager, and by Mrs. Roula El Derbas from the
18 Tripoli bar as Legal Officer, and I, of course, am head of the
19 Defence Office. For proper form, ladies and gentlemen and Your Honour,
20 to the extent that the lead counsel, Mr. O'Sullivan, isn't present here
21 today, ¹it will be the Defence Office that will be asking your leave to
22 address the Court in respect of these proceedings today.

23 PRESIDING JUDGE RE: Yes, we will grant him leave again. Thank
24 you, Mr. Roux.

25 For the Legal Representative for the Victims.

1 MR. HAYNES: Good morning, Your Honour. Peter Haynes for the
2 participating victims, and I'm assisted by Ms. Kinga Tibori and
3 Ms. Tamara Kosic.

4 PRESIDING JUDGE RE: Thank you.

5 And, Mr. Grellet, do you want to be heard today or do you wish to
6 announce your appearance?

7 MR. GRELLET: [Microphone not activated]

8 THE INTERPRETER: Would the gentleman activate his mike? Message
9 from the English booth.

10 MR. GRELLET: [Interpretation] Good morning, Your Honour, ladies
11 and gentlemen of the Court. I would just like to introduce myself.
12 Mr. Grellet, head of the Victims Participation Unit, but I won't be
13 addressing the Court today. I'll just be attending the proceedings.
14 Thank you.

15 PRESIDING JUDGE RE: Okay. Let's move to the business of the
16 day. We have ten issues on the agenda. As you can see, we have quite a
17 bit of work to get through today. We started slightly late. We will go
18 for an hour and a half and break, if necessary, to continue. As I
19 understand, Mr. Young at least wishes to make some substantive
20 submissions on the last issue, number 10, on optical character
21 recognition --

22 MR. YOUNG: Your Honour --

23 PRESIDING JUDGE RE: Which you see we put last on the agenda.

24 MR. YOUNG: Yes, that's quite correct, Your Honour.

25 PRESIDING JUDGE RE: So let's start with opening statements. I

1 just wish to hear from the parties as to whether anything has changed in
2 relation to your previous estimates of how long you will be taking and
3 for the Defence to update the Trial Chamber as to which, if any, wish to
4 give opening statements.

5 Mr. Milne or Mr. Cameron.

6 MR. MILNE: Your Honour, as far as the Prosecution is concerned,
7 nothing has changed. For clarification, I can say that the Prosecution
8 anticipate that the opening will be in the order of one and a half days.
9 I anticipate also that that will be divided between addresses from the
10 Prosecutor, from myself, and from Mr. Cameron, and our target is to
11 finish by the middle of the day, on the Friday, assuming that we make a
12 clean start, next Thursday, the 16th.

13 PRESIDING JUDGE RE: Mr. Haynes.

14 MR. HAYNES: No, nothing has changed. We would hope to conclude
15 our opening statement within one court session of an hour and a half or
16 two hours.

17 PRESIDING JUDGE RE: The Defence.

18 MR. HANNIS: Your Honour, the Ayyash team will not be making an
19 opening at this time. Thank you.

20 MR. KORKMAZ: [Interpretation] Your Honour, Badreddine's Defence
21 is confirming the fact that it intends to make an opening statement,
22 30 minutes in duration. We'll endeavour to adhere to that particular
23 duration. Having said that, given the proposals made by OTP in respect
24 of their opening statements and Legal Representative of Victims, is it
25 possible to speak on Friday or will it be set in stone that we'll be

1 making our opening statements on Monday, bearing in mind timing issues on
2 Friday? Should we therefore be expecting to make our opening statements
3 on Monday? Defence Badreddine obviously plus my colleagues from the
4 Oneissi team. Thank you, Your Honour.

5 MR. HASSAN: [Interpretation] Regarding the Oneissi Defence team,
6 we have the intention to have an opening statement that will not exceed
7 three hours. It will be delivered by Mr. Courcelle-Labrousse,
8 Philippe Laroche [indiscernible].

9 MR. YOUNG: I confirm I will not be making an opening statement.

10 PRESIDING JUDGE RE: Just in terms of the timing and your
11 question about -- Mr. Korkmaz, about whether it's set in stone. No, of
12 course it's not set in stone. The Trial Chamber wants to ensure that
13 each of the parties has the time necessary to put their case at the
14 beginning of the trial - it's very important - and is comfortable in
15 doing so. We don't want to rush any party at this particular stage and
16 in that respect in relation to the participating victims, we have
17 discussed the issue with the Registrar who has assured the Trial Chamber
18 that if there is any question of funding that there is adequate funding
19 for the participating victims to remain in the Netherlands until all
20 opening statements are finished or that means over the weekend of 19th
21 and 20th of January. Of course any participating victim who wishes to
22 leave before then may of course do so. So I'm saying to you, the
23 Registrar has assured us the funding is there, and also if there are any
24 issues relating to the need for professional psychological assistance,
25 those services will be provided by the Tribunal for any victims

1 participating during the stay in the Netherlands.

2 The situation is slightly fluid at the moment. It depends on how
3 long the Prosecutor takes. As you know, sometimes these things can take
4 longer or shorter. No matter how many times you rehearse it in front of
5 the mirror or whatever audience you have, things don't always go
6 according to plan. The present plan of course is to sit on the Thursday
7 and Friday and to continue on Monday and Tuesday until the opening
8 statements are completed, and then - we'll come to this in a moment - to
9 start with the evidence.

10 Does that present you with any difficulties if we phrase it in
11 that way at the moment?

12 MR. KORKMAZ: [Interpretation] No, Your Honour. It was just a
13 question of logistics because we provided for the fact that we would do
14 things on Friday. If we were to make the statement on Monday, then
15 obviously we have to make sure that we stay on the weekend, but anyway
16 we'll fall into line. That's no problem whatsoever.

17 PRESIDING JUDGE RE: So we are sitting on Friday. The intention
18 is to sit on the Monday, weekend break, and continue with the trial as
19 the trial will have opened.

20 Okay, can we move to the second item, which is Prosecution
21 witness order for the first part of the trial. The Trial Chamber had a
22 meeting with the parties two days ago in which we informally discussed
23 the order of presentation and where we're going. Can you please inform
24 the Trial Chamber publicly, Mr. Milne, of your intention with calling
25 witnesses.

1 MR. MILNE: Your Honour, yes. What is anticipated is that once
2 the openings are complete, the first and relatively short part of the
3 Prosecution case will be a brief presentation of essentially short
4 biographies of those who are the deceased victims and some information
5 about those who are the injured victims in the explosion. We don't
6 expect that that will take particularly long and much of the material is
7 the subject of a Section 1 of -- I beg your pardon, a Rule 154
8 application which will be lodged by tomorrow. The Defence have been made
9 aware of this and the material contained therein is, in our view,
10 entirely uncontentious and should cause them no difficulties.

11 We have then scheduled eight witnesses over the coming days that
12 will follow on from then. Of those eight witnesses, each will give live
13 evidence. Seven are scheduled to appear in person in this Trial Chamber.
14 One is the subject of an application - which I see is the next topic on
15 the agenda - to have their evidence heard by videolink from Beirut.

16 Your Honour, it's our present anticipation that that evidence
17 will take up the rest of that week, that is, the week beginning the
18 20th of January, so from the Wednesday through to the Friday, and will
19 run into the following week as well from Monday, the 27th, and we have
20 scheduled witnesses for Monday, the 27th, into Tuesday, the 28th,
21 already.

22 The names of those witnesses have all been notified to the
23 Defence. I don't propose to repeat them in court now. As the Court will
24 appreciate, there has to be an element of fluidity because arrangements
25 are being made not only for travel but for visa purposes and therefore

1 the precise order may change slightly. With the Court's leave, what I
2 would propose to do is by Monday coming, that is, by Monday, the 13th,
3 confirm both to the Trial Chamber and to my learned friends for the
4 Defence the anticipated order, having gleaned the best available
5 information by that stage, as to the order of which the witnesses will be
6 available. I trust that assists.

7 PRESIDING JUDGE RE: Is there anything the Defence wishes to say
8 in response? You can meet the Monday notification?

9 Mr. Roux wants to say something.

10 MR. ROUX: [Interpretation] Yes, Your Honour, ladies and gentlemen
11 of the Bench. As I said last time we met, the head of -- well, the
12 Defence Office is the sole entity to address the Court in respect of the
13 Merhi case. And once again, I would like to draw everybody's attention
14 to the circumstances that we currently find ourselves in, in respect of
15 that case. Now, no doubt --

16 PRESIDING JUDGE RE: I ask you to pause there, but we actually
17 have an agenda item here which you will see is called: Possible joinder
18 of the Prosecutor versus Merhi, which is item number 9. If I could
19 please conduct this in the order on the agenda, and we'll come to that
20 later. And I'm very happy for you to address us on that particular point
21 in the evidence, that point.

22 MR. ROUX: [Interpretation] Your Honour, what I want to say now
23 isn't directly linked in with the question of the joinder. At this point
24 in time, ²I just wish to express my extreme misgivings to remind you that
25 ³the Merhi team that I have appointed is currently finding itself in the

1 public gallery because it cannot attend these proceedings, so I have to
2 present their interests here and now and to say -- to have this feature
3 on the record, 'I'd like to say that the Merhi team has huge misgivings
4 about the fact that witnesses will be heard, as we've just heard, bearing
5 in mind they won't necessarily be in the courtroom and to provide
6 cross-examination anyway, and then of course we can move to the item on
7 the joinder later on.

8 PRESIDING JUDGE RE: I repeat, the appropriate time to have this
9 discussion is under item 9 and not now. Thank you, Mr. Roux.

10 Mr. Young.

11 MR. YOUNG: Yes, Your Honour, just simply to say that what
12 Mr. Milne proposes is satisfactory as far as we are concerned. However,
13 when we reach the item in terms -- item 5 on the conduct of the trial
14 proceedings we will make some submissions as to the order of witnesses
15 and the procedure as far as any potential protocol is concerned.

16 MR. EDWARDS: Good morning, Your Honour. Just two points to make
17 on behalf of the Badreddine team. We are still awaiting a motion from
18 the Office of the Prosecutor with regard to expert witnesses. We were
19 notified by a motion dated the 19th of December that such a motion would
20 be forthcoming. We're still waiting for it. And of course quite apart
21 from the non-expert witnesses that the Prosecution intend to call, this
22 case, and especially the first part of the -- the first phase of the
23 trial relies extensively on expert witnesses. We're still rather in the
24 dark in terms of which expert witnesses the Prosecution finally propose
25 to call. And I wonder if we can be assisted as to when such a motion is

1 forthcoming.

2 PRESIDING JUDGE RE: Can you just remind us of the order or the
3 motion?

4 MR. EDWARDS: Motion of the 19th of December of last year. It
5 was the motion relating to -- the motion relating to in-person and
6 video-conference link witnesses. In the introduction to that motion, the
7 Prosecution puts the Trial Chamber and the parties on notice that a
8 motion pursuant to Rule 161 is forthcoming and we're still waiting for
9 it.

10 [Trial Chamber and Legal Officer confer]

11 PRESIDING JUDGE RE: Mr. Milne.

12 MR. MILNE: Your Honour, my learned friend's absolutely right.
13 They are still waiting for it. Your Honour, I'm slightly surprised that
14 the Defence are unaware of the likely experts because there's been quite
15 some correspondence both formally and informally in relation to this, but
16 the Prosecution have not so far lodged a formal 161 application for a
17 variety of reasons. Your Honour will be aware - and I make no complaint
18 about this - that there are outstanding applications in relation to 155
19 witnesses who would be called before we got even anywhere near those
20 experts. And we have very much in mind of course the fact that there is
21 the joinder application. Whilst in relation to many of the 155
22 applications, we anticipate that these will be largely uncontroversial.
23 They deal with the area, as the Court knows, of the victims and the
24 injured. As far as the experts are concerned, it's highly likely that
25 there will be controversy and it's highly likely that if this were to

1 result in a joint trial, that there would need to be some consideration
2 on the part of the Merhi team. Your Honour, it's one thing to re-visit a
3 witness if one has to simply re-call a witness; it's quite another to
4 have to re-visit an entire filing. And we would prefer, if at all
5 possible, that any discussion, any debate, and any submissions come from
6 all of those involved. We will know, once of course the joinder matter
7 is resolved, which parties we need to hear from. Your Honour, we have it
8 effectively at the forefront of our minds. It's something that can be
9 dealt with at relatively short notice, but we're reluctant to jump the
10 gun at this stage.

11 MR. EDWARDS: Thank you, Your Honour. That's an extremely
12 helpful response. We are of course aware in broad terms the Rule 161
13 expert witnesses that are likely to come to court, but we want the T's to
14 be crossed, the I's to be dotted. We want to know exactly where we stand
15 as soon as possible. But Mr. Milne has been helpful. So we're grateful
16 for that. The second point is, and I mean this with great respect, I
17 wonder if the Trial Chamber is in any position at all to indicate when a
18 second Rule 155 decision is likely to be rendered? That also will assist
19 us in terms of our preparations for trial. Thank you.

20 PRESIDING JUDGE RE: Very soon, Mr. Edwards, very soon.

21 Is there anything else on that item? All right. We can turn to
22 the third item, which is a Prosecution motion for testimony by videolink,
23 and this is an oral ruling which I will make. We're now deciding
24 Prosecution application under Rule 124 filed on the
25 15th of November, 2013, for Witness PRH-261 to testify by videolink.

1 Counsel for Mr. Ayyash, Badreddine, Oneissi, and Sabra responded on the
2 24th of December. The Prosecution filed originally a motion to admit the
3 witness's evidence under Rule 155. So here's one of the decisions you
4 were anticipating, Mr. Edwards, live, that is, to admit the written
5 statement of the witness into evidence in lieu of oral testimony.

6 Counsel for Mr. Ayyash and Mr. Sabra objected to the admission of
7 evidence which failed to comply with the relevant practice direction on
8 written statements. The Chamber agrees with them that the witness
9 statement fundamentally breaches the practice direction because the
10 identity of the witness was not verified by the Prosecution. The
11 statement does not contain a witness identification sheet or formal
12 acknowledgement by the witness. The witness was not warned of the
13 consequences of providing false testimony or provided with the text of
14 the relevant rules; therefore the Trial Chamber denies the Prosecution's
15 request to admit Witness PRH-261's evidence under Rule 155.

16 In the alternative, the Prosecution sought to call the witness to
17 testify by videolink. Rule 124 permits the Chamber to receive testimony
18 by videolink in the interests of justice. The Chamber will grant
19 applications of this kind on a case-by-case basis. In general, the
20 Chamber considers that videolink testimony respects and preserves the
21 rights of the accused to effectively cross-examine and to confront
22 witnesses against them. It can allow the Chamber to assess the
23 credibility and reliability of the witness's evidence as if they were
24 present in the courtroom. We emphasize that witnesses may be called by
25 any party or for the Legal Representatives for the participating victims

1 by videolink. It does not only apply to the Prosecutor.

2 We find that it is in the interests of justice to receive
3 PRH-261's evidence by videolink and grant the Prosecution motion. We
4 reach this view having regard to the nature of the evidence, the rights
5 of the accused, the current situation in Lebanon, and the reported views
6 of the witness in the statement. We note, especially, that none of the
7 counsel for the accused objects to the witness testifying by videolink,
8 and we are satisfied the rights of the accused will not be prejudiced by
9 videolink testimony. We therefore order PRH-261's testimony to be
10 arranged in compliance with the practice direction and we request the
11 Registrar to appoint a presiding officer to facilitate this.

12 The next one, item 4 on the agenda, is an oral decision on a
13 Prosecution motion under Rule 158 concerning an unavailable witness. The
14 Prosecutor filed a motion under Rule 158 on the 11th of December, 2013,
15 requesting the written statement of Witness PRH-148 be admitted into
16 evidence because she is now unavailable to testify. Defence counsel
17 indicated they wish to make no submissions on this application. The
18 Trial Chamber has decided to admit the statement into evidence. The
19 statement describes how the witness was seated in a parked car in the
20 St. George area in Beirut waiting for a relative who was in a nearby
21 building. It also describes the explosion and the injuries, including to
22 her head, that the witness sustained in the blast.

23 Rule 158 provides that in deciding whether to admit into evidence
24 the statement of an unavailable person, the Trial Chamber must, one, be
25 satisfied of the person's unavailability; and two, find that the

1 statement is reliable, taking into account how it was made and
2 maintained. The Chamber must also consider whether the evidence goes to
3 the proof of the acts or conduct of the accused. The Prosecution has
4 provided the Trial Chamber with medical evidence showing that the witness
5 is suffering from dementia. We are satisfied that a person suffering
6 from dementia is unavailable to testify under Rule 158. We are satisfied
7 that the evidence shows the witness has, in fact, dementia and we are
8 satisfied she is therefore unavailable to testify under Rule 158.

9 We are satisfied the witness statement is reliable and satisfies
10 the necessary indicia of reliability because it was taken by an
11 interpreter of the UNIIIC -- sorry, it was taken by the investigators of
12 the UNIIIC with the assistance of an approved interpreter. Each page of
13 the statement was signed by the witness, it was read to her in Arabic,
14 her native tongue, and she acknowledged the statement was true to the
15 best of her recollection, and the witness was advised to be honest and
16 truthful in her answers and of the potential consequences of false
17 testimony. The statement does not go to the acts -- to proof of the acts
18 and conduct of the accused, but rather establishes that the victim is an
19 injured victim -- sorry, the witness is an injured victim which the
20 Defence has said will not contest at trial.

21 Witness PRH-148's written statement may thus be admitted into
22 evidence at the appropriate time during the trial.

23 We turn to item 5 on the agenda, which is submissions from the
24 parties under Rule 130 of the Rules of Procedure and Evidence on the
25 conduct of the trial proceedings. The Trial Chamber wishes to issue

1 directions or guide-lines on the conduct of the proceedings under
2 Rule 130. The guide-lines will include matters such as the
3 presentation -- the manner of presentation of evidence, the admission of
4 documents into evidence, the necessary notice to the Trial Chamber and
5 the parties of those calling the witnesses, communications with
6 witnesses, and the modalities of victims' participation. We note that
7 the Defence has filed its submissions on the issue of witness proofing or
8 witness preparation, and we don't need the Defence to make further
9 submissions. But we asked the Prosecutor in our meeting with the parties
10 two days ago to make any submissions it wishes to make. In that
11 conference we told the parties that the Trial Chamber is of the view that
12 witness preparation is part of international criminal law, procedures,
13 and we consider it to be a normal part of ensuring witnesses are properly
14 prepared before giving their testimony before the Tribunal. We will
15 issue the guide-lines before the trial opens next week. So first we will
16 turn to the Prosecutor to hear what he has to say as to what you believe
17 we should put in the order as Rule 130 provides we should make it after
18 hearing from the parties.

19 Over to you, Mr. Cameron.

20 MR. CAMERON: Thank you, Your Honour. My submissions will be
21 very brief in this area. I expect it to be common ground among the
22 parties that a properly prepared witness is essential to the efficient
23 management of trial proceedings. All counsel here are required by our
24 profession to adhere to high standards of ethical conduct, not only in
25 our respect of domestic jurisdictions, but also before this Tribunal by

1 virtue of the very explicit code of professional conduct created pursuant
2 to Rule 60. It's the Prosecution's position that all counsel for the
3 Defence are experienced, very capable, highly principled practitioners.
4 For the Prosecution I have no doubt whatsoever that they will adhere in
5 all cases to the high standards set out in the code of professional
6 conduct for counsel appearing before the Tribunal. It is also, I expect,
7 common ground amongst experienced counsel as to the appropriate
8 boundaries within which proper witness preparation may occur and that it
9 is not necessary to prescribe additional rules beyond the principles
10 governing counsel in the code.

11 During the course of appropriate witness preparation, it is
12 common for new information to emerge. When this occurs, disclosure will
13 be provided by the Prosecution to counsel for the Defence in a timely
14 way, and by whatever method is most efficient for the parties given the
15 particular circumstances, which may vary over the course of time and with
16 consultation with the Defence. The idea is to get the information to
17 counsel for the Defence in the most efficient and practical way as
18 possible.

19 Those would be my submissions.

20 PRESIDING JUDGE RE: Thank you.

21 Any Defence counsels wish to make submissions? No particular
22 order.

23 MR. EDWARDS: I'll go first then. The Defence have already made
24 submissions with regard to witness preparation. The Trial Chamber is
25 aware of what our primary position is, but submissions have been made on

1 a subsidiary basis in the event that the Trial Chamber takes a different
2 view. And we are alive to the way in which the -- the way in which the
3 wind is blowing.

4 Just two points in response to Mr. Graeme's submissions, if I
5 may. It is available to the Trial Chamber to prescribe time-limits by
6 which, for example, information that arises out of witness preparation be
7 disclosed to the Defence and to actually nail a dead-line down rather
8 than simply leaving it open, such as "as soon as possible."

9 And we would submit that any witness preparation be carried out
10 no later than 48 hours in advance of a witness's testimony and that any
11 information arising out of that witness preparation session be disclosed
12 to the opposite party within 24 hours. Of course if that can be
13 increased, then so much the better.

14 Of course, everyone in this room understands, appreciates, that
15 counsel and advocates for the Office of the Prosecution are bound by a
16 code of conduct and will carry out their activities in an ethical manner.
17 However, we did in our submissions make the suggestion that witness
18 preparation sessions be recorded, either by audio recording or video
19 recording or indeed by both. And I simply make this observation that not
20 only can this on occasion provide material for cross-examination to the
21 other side, but it also can be helpful in terms of the way in which it
22 protects the advocate or the representative of the OTP or whichever party
23 carrying out the witness preparation itself. It does -- it does have
24 this protective aspect to it, and we would ask the Trial Chamber to give
25 consideration to recording in the way that we suggest in our submissions.

1 There are other submissions we make, other points which the
2 Trial Chamber will take into account.

3 PRESIDING JUDGE RE: Just on that point, you are completely aware
4 that any guide-lines we issue apply equally to Defence witnesses?

5 MR. EDWARDS: Yes, of course.

6 PRESIDING JUDGE RE: Yes.

7 MR. EDWARDS: One of the reasons why I ...

8 [Trial Chamber confers]

9 MR. EDWARDS: Yes, I was just saying that that's one of the
10 reasons why we underscore the fact that recording of preparation sessions
11 has as much a protective quality to it as anything else.

12 JUDGE NOSWORTHY: And if I might ask you, Mr. Edwards, do you not
13 anticipate or see any cautions in relation to applying that rule to the
14 Defence as well as the Prosecution across the board?

15 MR. EDWARDS: If I understand your question, Your Honour, the
16 same conditions should apply to all parties.

17 JUDGE NOSWORTHY: Thank you.

18 MR. EDWARDS: In terms of other guide-lines that the Defence, the
19 Defence for Mr. Badreddine, would invite the Trial Chamber to give
20 consideration to, if I may, if the -- if my learned friend has finished
21 with his suggestions, there are -- there are effectively four chapters,
22 if you like, to our suggestions, four parts to our suggestions. The
23 first relates to the order of the calling of witnesses. And we would
24 invite the Trial Chamber to give consideration to providing a guide-line
25 that each party calling evidence shall inform the Trial Chamber and the

1 opposing party and the Legal Representative of Victims of the exact order
2 of witnesses due to testify and the scheduled date of their appearance at
3 trial; that such a schedule be updated at the end of each week of trial;
4 and that such a list provide for an order of witnesses for the following
5 two weeks; that any subsequent changes to that schedule be notified as
6 soon as possible.

7 The second -- the second portion of submissions relates to the
8 use of documents during examination-in-chief, and it's our submission
9 that the calling party should provide to the Trial Chamber, the opposing
10 party, and the LRV with a schedule of exhibits which it intends to admit
11 into evidence through each of its own witnesses during
12 examination-in-chief in good time. This allows for sufficient time to
13 prepare for cross-examination. We would suggest that a scheduling of
14 exhibits be filed well in advance of the first day of the testimony of
15 the witness in question, and in any event not less than three working
16 days before the witness's testimony. However, that is subject to the
17 caveat that where the schedule of exhibits is likely to include
18 voluminous documentary evidence, very many exhibits, it may be reasonable
19 for the dead-line to be pushed forward so that the document -- so that
20 such a schedule is served on the victims, on the opposing party, and the
21 Trial Chamber well in advance of even three working days.

22 PRESIDING JUDGE RE: Mr. --

23 MR. EDWARDS: In addition --

24 PRESIDING JUDGE RE: Just in relation to the providing of
25 schedule of documents, will you have any submissions on whether the

1 Defence should provide the Prosecutor with a list or the documents or
2 anything it proposes to put to Prosecution witness?

3 MR. EDWARDS: Yes, just coming on to that, Your Honour. Before I
4 do that, can I just finish off on the use of documents during
5 examination-in-chief by stating that the Trial Chamber should encourage
6 that the parties only include material on the scheduled exhibits that
7 they actually intend to use and that they are able to use. I say that to
8 avoid the situation where an avalanche of documentation is notified to
9 the opposing party, of which a small fraction only is to be used or
10 intended to be used. I don't anticipate that as being a problem, but
11 nevertheless.

12 So yes, as far as cross-examination is concerned, the
13 Trial Chamber we encourage to consider this, that use may be made of any
14 document that is already in evidence, including transcripts of witnesses
15 that have already testified. Where a cross-examining party intends to
16 use documents in the course of cross-examination, it should inform the
17 opposing party and the Trial Chamber immediately before the commencement
18 of the witness's examination-in-chief.

19 The fourth proposition and final proposition is this, and it
20 relates to communication with witnesses after the commencement of their
21 testimony, and we would invite the Trial Chamber to give consideration to
22 guide-lines such that no party may communicate, whether directly or
23 indirectly, with a witness once that witness has made a solemn
24 declaration pursuant to 150(A) or in the case of a child under the age of
25 18 has started to give his evidence -- yes, once that witness has

1 commenced evidence. Where a party is, nevertheless, of the opinion that
2 for whatever reason in exceptional circumstances that it's necessary to
3 communicate with a witness after he or she has commenced testimony, the
4 party in question must first obtain the leave of the Chamber; and
5 secondly, any such communication must be in the presence of other parties
6 to the trial unless that is waived by the other parties.

7 Those are, broadly speaking, the four suggestions we have for the
8 guide-lines.

9 [Trial Chamber confers]

10 PRESIDING JUDGE RE: Could we just ask the Prosecutor to respond
11 to the last two points, mainly Mr. Edwards' submission on providing
12 documents they intend to use in cross-examination at the -- immediately
13 before the commencement of the witness's examination-in-chief is the
14 first one, and the second one is communication with a witness after the
15 testimony has started.

16 MR. YOUNG: Your Honour, forgive me, before my learned friend
17 addresses you, I think some of us also may wish to make some submissions.
18 Would Your Honour like to hear us before Mr. Milne on that? It's a
19 matter for Your Honour, but certainly we would like to make some
20 additional submissions.

21 PRESIDING JUDGE RE: We would be happy to hear them, but would
22 the Prosecutor giving his view on that help you?

23 MR. YOUNG: Well, let's see.

24 MR. CAMERON: If the intent of the provision of documents by the
25 Defence to the Prosecution is to provide them with some intelligible

1 notice of the position of the Defence or what documents they're going to
2 use, it does not really fulfil that purpose if they're placed in our
3 hands minutes before the commencement of the examination-in-chief. So if
4 you are considering the propriety of the Defence providing documents to
5 the Prosecution in respect of cross-examination - and it's certainly a
6 worthy position for my friend to take - I would ask that you consider a
7 slightly longer time-period in order to give true, purposeful effect to
8 the underlying reason for the communication of documents. It does us no
9 good to get them minutes before when there is -- when the purpose has
10 vanished.

11 In respect of communication with witnesses, there are two models
12 available to you. One model is that once a witness begins his or her
13 testimony that there be no further communication between counsel leading
14 the witness and that witness thereafter. The second model is similar to
15 the first but less restrictive, and it would relate to discussions may
16 occur but only in respect of matters yet to come with the witness and no
17 discussion of anything before. This can be useful sometimes with very
18 lengthy witnesses, sometimes expert witnesses whose testimony may flow
19 over a period of days. It relies upon the ethical obligations of the
20 counsel. It's -- it can be of benefit and sometimes if -- particularly
21 if witnesses testify not only on many successive days but on days where
22 there's a break in the testimony, that the testimony might be spread over
23 a number of weeks or months, the opportunity to communicate, either with
24 the Defence or the Prosecution, the opportunity to communicate directly
25 with the witness about testimony not which has already been given but

1 upcoming testimony can be beneficial to an efficient proceedings.

2 So there are two models, in my respectful submission, that are
3 open to you to consider.

4 PRESIDING JUDGE RE: Mr. Edwards.

5 MR. EDWARDS: I wonder if I can step on Mr. Young's toes and
6 respond very briefly to that. The suggestion that we make with regard to
7 the provision of documents to be used during cross-examination, it cuts
8 both ways. I'm not suggesting that this should be discriminatory in any
9 way at all. The same rule would apply when the Defence case starts and
10 the Prosecution have documents to use in the course of cross-examination
11 of Defence witnesses. There's nothing discriminatory about it at all.

12 As far as the other point, communication with witnesses after
13 they have been sworn, we would urge that the first model be adopted, it's
14 the one that we're most in favour of. The second model suggested by
15 Mr. Cameron, the only point I would make with regard to that is that in
16 terms of upcoming evidence, well that can be, that should be, material
17 that is discussed during witness preparation, before the witness starts
18 to give his or her evidence in the first place. So in other words, the
19 point that Mr. Graeme is seeking to make can be -- that can be achieved
20 at a much earlier stage of the proceedings. If the Trial Chamber were,
21 nevertheless, to adopt this second model, we would request the
22 Trial Chamber to give consideration to any such communications between
23 the parties, whichever party that is, the Prosecution or Defence, be
24 recorded in some way.

25 PRESIDING JUDGE RE: Now, Mr. Young, is anything Mr. Cameron said

1 caused you to change your submissions?

2 MR. YOUNG: No, Your Honour, no. It was nice hearing him,
3 though.

4 Your Honour, just some general points. In relation to witness
5 preparation, of course both my learned friend for the Prosecution and for
6 the co-accused have rightly stressed the high ethical standards which are
7 expected of all of us and I'm sure which will be upheld and maintained.

8 In terms of witness preparation, can we make some suggestions?
9 We would support what Mr. Edwards has said in terms of the disclosure to
10 the Defence of any witness preparation documentation. We would say that
11 if, for example, during witness preparation, if that's what Your Honours
12 are going to find is appropriate, then we would say that there should be
13 some simple form, some document recording any additional material which
14 has been provided by the witness, and that we would suggest that that
15 document should be served on the Defence at least 24 -- 48 hours in
16 advance of them giving evidence in chief. We would also ask Your Honours
17 to consider that any document should be signed and an adopted record of
18 the witness preparation be made available to us. I think that's what
19 Mr. Cameron is accepting should occur.

20 We would also submit that as a protection for any -- whether
21 there's going to be witness preparation, that any witness preparation
22 should be audio-recorded. Fourthly, we would say that any witness
23 preparation should be limited to the areas of evidence relied upon by the
24 calling party. And fifthly, we would say that any exculpatory evidence
25 which may be provided during such preparation should be disclosed

1 immediately to the Defence.

2 In terms of the -- in relation to the question that
3 Judge Nosworthy asked my learned friend, just to clarify the point, I'm
4 sure that -- I'm sure that Mr. Edwards was saying effectively that both
5 the Defence and the Prosecution will maintain the highest ethical
6 standards, but I doubt that my learned friend was in fact saying, unless
7 I misheard him, that there is any obligation on the Defence to disclose
8 Defence witness statements because there is none. Of course the Defence
9 will conduct the taking of witness statements with any witnesses that we
10 may have in a proper, ethical fashion, but, with respect, there's no
11 obligation whatsoever for us to disclose. So different rules with
12 respect to apply -- I'm sure that was what my learned friend was saying.

13 In terms -- I don't know if Your Honour wants to deal with other
14 parts of the suggested guidance now or whether to continue hearing my
15 learned friends because we'd make some submissions in relation to a
16 protocol on the order of witnesses and on the scope of examination,
17 cross-examination. Would Your Honour like to hear us later on that?

18 PRESIDING JUDGE RE: The appropriate time is now. You are on
19 your feet.

20 MR. YOUNG: Thank you. Well, in terms of the order of witnesses,
21 of course for the start of trial we've heard Mr. Milne very clearly
22 explain his position and that seems satisfactory. But once -- once the
23 trial is underway with witnesses as to fact, expert witnesses, and the
24 like, we would suggest, in terms of the order of witnesses, that a
25 regular provision of witness schedule should be provided to the Defence

1 at least two weeks in advance of testimony on a rolling basis to give us
2 reasonable notice. And we would also say that updates to witness
3 schedules on an ongoing basis should be provided as soon as reasonably
4 possible.

5 In terms of the scope of examination, cross-examination, we would
6 submit that the order should be very much that the Prosecution examine,
7 Legal Representative for Victims, then the Defence, and we would submit
8 that it must be the Defence who cross-examine after the other parties.

9 We would also say that the order of the Defence team examination
10 of witnesses make -- should be agreed between the Defence teams which may
11 be more practicable and beneficial and expeditious. If one particular
12 team has a better interest or a closer interest in a witness rather than
13 another. Your Honour, in terms of judiciary --

14 PRESIDING JUDGE RE: We agree --

15 MR. YOUNG: Thank you.

16 PRESIDING JUDGE RE: -- with those last two points. There's no
17 difficulty with the last two points.

18 MR. YOUNG: I'm very grateful.

19 In terms of judicial questioning, Your Honours, we would say that
20 of course Your Honours can question at any time, but we would submit that
21 the Defence must be able to ask follow-up questions if Your Honours begin
22 questioning a particular witness so that we have an opportunity to
23 address any issues that may arise through judicial questioning.

24 PRESIDING JUDGE RE: Again, there's no issue with that. Of
25 course.

1 MR. YOUNG: Thank you. I'm very grateful.

2 In terms of disclosure of exhibits to opposing parties,
3 Your Honour, we would say firstly that the Prosecution should be limited
4 to the exhibits linked to the witnesses in the Legal Workflow, as I think
5 the Pre-Trial Judge decided. Secondly, we would submit that amendments
6 should be -- any amendment to that should be notified at least 72 hours
7 before scheduled testimony and also that any objections to exhibits may
8 be made orally for the sake of expedition rather than by written filing.
9 As I said earlier, we would strongly oppose any disclosure of any
10 exhibits that the Defence may seek to rely upon when cross-examining a
11 Prosecution witness, save until after the witness, according to Rule 150,
12 has given the solemn declaration. Once they have given the solemn
13 declaration under Rule 150, we would say that is the opportune time when
14 the Defence should be obliged to disclose the exhibit, not before. The
15 Prosecution know their case and that's the appropriate time. And with
16 respect, I'm not limiting myself to any -- simply Prosecution exhibits,
17 but with respect of course high ethical standards will be maintained, but
18 these rules or this protocol would assist in avoiding any inadvertent or
19 inappropriate, unfortunate situations from occurring.

20 Forgive me one moment. Your Honour, that's all I say at this
21 stage. Thank you.

22 PRESIDING JUDGE RE: Mr. Hannis.

23 MR. HANNIS: Your Honour, I would agree with the last thing I
24 think Mr. Young said, that we think the cross-examination documents
25 should not be provided until after the witness has been sworn,

1 immediately after he's sworn, and we can do that electronically. And if
2 that causes some problem because of the timing to the party, the
3 Prosecution in this case could request some additional time before
4 starting their re-direct if the Court thought it were appropriate. I
5 think that's the best way to handle that. It avoids the situation then
6 where the Defence has given these documents, the Prosecution then takes
7 and shows our documents to the witness before he testifies, and a witness
8 who may be less scrupulous than others may take advantage of it too,
9 adjust his testimony that he wouldn't be able to do if he hasn't seen it
10 until he's actually been cross-examined. And that ties in with the no
11 contact between counsel and witness after testimony begins, absent an
12 application by the party upon good cause shown and Your Honours deciding
13 that it might be appropriate in that situation. I know in the ICTY we
14 sometimes had problems with experts who had been called and were
15 testifying for days, but that same in-house expert was also working with
16 other lawyers in the building and we had to make adjustments for those
17 situations, but I don't think we're going to have much of that problem
18 here and it certainly can be handled by Your Honours if and when it
19 arises.

20 Witness preparation and the proofing note or the equivalent being
21 provided 24 or 48 hours ahead of time would be very nice and perhaps I
22 shouldn't speak for the Prosecution, but I know from my experience as a
23 Prosecutor at the ICTY sometimes I wasn't able to see that witness until
24 12 hours before they were testifying and to get a proofing note sent to
25 the other side 24 or 48 hours was difficult, partly because victims and

1 witnesses has a policy for not keeping witnesses in The Hague for more
2 than five days and so they were only brought up a day before they were
3 going to testify because they were going to run over the weekend,
4 et cetera, et cetera. I have nothing further to add at this time. We
5 will await your guide-lines and see if we have anything to raise then.
6 Thank you.

7 MR. HASSAN: [Interpretation] We do not have anything to add on
8 this level; however, we would like to be sure that the witnesses will not
9 communicate between each other and will not exchange any information
10 during the course of the testimony. We want to be sure of that. Thank
11 you.

12 PRESIDING JUDGE RE: You can be -- rest assured, Mr. Hassan, the
13 Trial Chamber will issue the appropriate warnings to each and every
14 witness that appears before this Chamber in that regard.

15 Is there anything the Prosecutor wishes to -- I'm sorry,
16 Mr. Haynes, do you have any submissions on these issues?

17 MR. HAYNES: I don't particularly have a dog in this fight, but
18 in my submission it is important that procedures are clear and are in
19 place for the smooth running of a trial of this magnitude. And I will,
20 if you don't mind, offer you the benefits of some of my experience in
21 this regard. Firstly, as to trial scheduling, I think it is important
22 that all the parties and the Trial Chamber are aware of what is coming,
23 both in the medium term and in the short term. And in my submission, the
24 most apposite structure is one whereby the party currently presenting its
25 case provides the Trial Chamber and the parties and participants with

1 monthly schedules of witnesses and weekly schedules of witnesses so that
2 everybody is adequately prepared in the medium and short term. I should
3 add that those schedules should only relate to viva voce witnesses.
4 There is really no need for anybody to provide schedules of witness
5 summaries they are about to read out because they can be considered
6 ex post facto.

7 Secondly, disclosure. Disclosure is important and despite what
8 has been said there is a measure of disclosure on all calling parties,
9 whether Prosecution, Legal Representative of Victims, or Defence.
10 Everybody's entitled to see some guidance as to what evidence is about to
11 be presented. And that disclosure extends both to material that has not
12 been seen before; for example, notes of witness preparation and documents
13 that are to be used in the witness's evidence in chief because
14 notwithstanding what they might have said to an investigator many years
15 previously, the evidence they actually give in court is likely to be
16 shaped by the documents that are referred to during the course of their
17 testimony. And to that end, there should be protocols, procedures,
18 rules, call them what you may, for the disclosure by the calling party of
19 documents they propose to use with a witness in his examination-in-chief
20 and of any notes of any preparation of that witness that has taken place
21 before he gives evidence. That is consistent with any sensible system of
22 disclosure.

23 My most recent experience of that was one whereby the party
24 calling the witness was obliged to disclose its list of exhibits to be
25 used with the witnesses seven days in advance of the calling of the

1 witness.

2 PRESIDING JUDGE RE: Which case are you referring to there?

3 MR. HAYNES: The Bemba case.

4 PRESIDING JUDGE RE: Okay.

5 MR. HAYNES: And that, of course, would facilitate the opposing
6 parties, were they given the opportunity to talk to the calling party's
7 witness to rehearse what that witness might say about those documents
8 before he or she did in fact speak to them. That therefore raises a
9 further question which nobody has yet addressed, which is what obligation
10 is there upon an opposing party who is given the opportunity to prepare a
11 witness to disclose what he has told them? And I have no submission to
12 make about that, but it's something that might well arise during the
13 course of this trial and might need addressing.

14 It really depends on what you're trying to achieve. If you're
15 trying to achieve a system whereby everybody knows everything that a
16 witness might say about every document everybody might use with him
17 before he comes into the courtroom or into the videolink facility, then
18 you're going to have very long periods and very wide-ranging obligations
19 of disclosure indeed. But I suspect that that is impracticable. What in
20 reality you're going to achieve is one where the calling party provides
21 fair disclosure to the opposing parties before the witness gives his
22 evidence in chief.

23 I am frankly surprised to have heard the submissions made by the
24 Defence as to what obligations they should adhere to in disclosing
25 documents in cross-examination. For my part, I would find it very

1 difficult to know what documents I would want to know in
2 cross-examination before I'd heard the end of the evidence in chief, and
3 the system I was familiar with at the ICTY was one whereby the
4 cross-examining party had no obligation to disclose what documents it
5 used in cross-examination until it commenced cross-examination or
6 immediately prior to the commencement of cross-examination. And as I
7 say, I'm surprised that the Defence makes submissions which impose upon
8 themselves an obligation to disclose documents earlier than that. I
9 would find it difficult to see how you could compose a list at that
10 stage, but there it is.

11 There are two further problems you're going to have to consider.
12 One has been alluded to and that is the amendment of lists of documents.
13 It's all very well imposing a time-limit for the disclosure of a, as it
14 were, provisional list of documents, but experience has taught me that in
15 reality the parties amend and amend and amend even during the examination
16 of a witness and seek your further leave and eventually the principle is
17 eroded. And you may well have to consider, as it were, what is the final
18 point at which a party can amend its list and add further documents and
19 what threshold it has to cross in order to persuade you to do so. And
20 the second point is this: You will need to consider what obligation
21 there is on the parties to disclose lists of documents for use in
22 re-direct or re-examination. That is a point that's been alluded to, but
23 I think it will probably require regulation.

24 Now, as to the examination of witnesses, I agree with Mr. Young
25 that the appropriate order is Prosecution, Legal Representative of

1 Victims, and then Defence, and I need say nothing about the appropriate
2 point at which judicial questions are put because I'm wholly in agreement
3 with you.

4 The questions put to witnesses, in my submission, need to be
5 regulated. The calling party should not ask leading questions, save
6 where the matter is beyond dispute or has been established with several
7 other witnesses --

8 PRESIDING JUDGE RE: Mr. -- why do you say we should issue a
9 formal order telling the parties what examination-in-chief actually
10 involves?

11 MR. HAYNES: I don't, but I think you might need to consider what
12 they are permitted to do in cross-examination.

13 Mr. Edwards briefly referred to, as it were, reference to
14 evidence that has already been heard in the case. That frankly presents
15 no difficulty because the cross-examining party can provide the parties
16 and the Chamber with a reference and everybody can be satisfied that what
17 is being put is, in fact, evidence that has been given in the case. What
18 is rather more difficult is whether the cross-examining party should be
19 entitled to put to a witness, statements of witnesses who haven't
20 given evidence in the case or might yet give evidence in the case. And
21 quite commonly what is done in these courts, I'm afraid, is the putting
22 of reports, press reports, informal statements, magazines, you name it,
23 and summaries of evidence that the classic we have heard in this case,
24 Mr. Witness. There is also the further problem of the putting of
25 evidence of protected witnesses, which requires a formula to be devised

1 to avoid notifying the witness currently on the stand that somebody he
2 may know has given evidence in the case.

3 That's all I wish to say about that. Re-examination may need
4 some formal regulation. It should arise from matters de novo that came
5 from cross-examination and not be, as it were, a further direct
6 examination.

7 But the last point I wish to address is this and that is the
8 admission of documents into evidence because I have some experience of
9 how badly wrong this can go. To quote Lady Macbeth, "If it were
10 done when 'tis done, then 'twere well it were done quickly." The
11 admission of documents into evidence should, in my submission, be done by
12 formal notice of all the parties at the conclusion of each witness's
13 evidence and any argument as to provenance, admissibility, or relevance
14 should be carried out at that point in time. The down side to that of
15 course is that it means that you can't usher one witness out of court and
16 the next one straight in. You do have to take a few moments to consider
17 where you are. That is far better than the nightmare of finding yourself
18 six months down the line and nobody knowing what is in evidence and what
19 is not. So I would advocate a system of immediate discussion of the use
20 of documents with the witness taking place at the conclusion of his
21 evidence.

22 I don't think there is anything else I want to say. As I say, I
23 have got no particular axe to grind in all of this, save that I hope that
24 these submissions were helpful in devising a system that will provide for
25 an efficient trial.

1 PRESIDING JUDGE RE: You made some very sensible submissions, if
2 I may say, Mr. Haynes.

3 Judge Nosworthy wishes to ask the Defence about some of the
4 points in your very sensible submissions.

5 JUDGE NOSWORTHY: I had said the Defence, but I think also it
6 would be helpful to hear from the Prosecution. But in relation to
7 Mr. Haynes' point concerning the scope of cross-examination and
8 guide-lines concerning the scope of cross-examination as it affects the
9 right to confrontation of witnesses, I would like to hear from the
10 Defence how they would feel about guide-lines touching and concerning
11 cross-examination where counsel has the ability to put to the witness the
12 witness statement of another witness and witness summaries and newspaper
13 reports I think Mr. Haynes referred to. I am interested on hearing from
14 the parties on that point.

15 [Trial Chamber confers]

16 MR. YOUNG: Your Honour, thank you for that question. If I may
17 just say obviously we're grateful to hear Mr. Haynes generally and always
18 of course, but I would say with respect in terms of the protocol as far
19 as the Defence is concerned and the calling of Defence evidence is, with
20 respect, premature. I think with respect the Trial Chamber should
21 consider guide-lines and protocols in relation to the conduct of the
22 Prosecution, particularly given that we are about to start the
23 Prosecution case.

24 In terms of the Defence approach, well, I would submit generally
25 that the Chamber should ensure what we have here is an adversarial trial,

1 and therefore a trial that enables and permits the Defence to put
2 evidence relevant to its case forward. So, with respect, as Mr. Haynes
3 and others have said, we have experienced counsel and I'm sure the
4 Chamber will allow counsel latitude and discretion so far as counsel is
5 relevant and not repetitious. And I'm sure the Chamber will want to give
6 counsel that latitude. But with respect, to allow the Defence the
7 opportunity to put its case forward, this would imply, in our respectful
8 submission, enabling the Defence to cross-examine witnesses considered
9 capable of providing such evidence, and not unduly restricting the
10 Defence's ability to elicit or produce such evidence. As any experienced
11 counsel will know, they will know what the parameters are, what they can
12 and cannot do. This is very much a matter of experience and judgment.
13 And, with respect, I'm not -- I would caution against drafting a protocol
14 which has too specific guide-lines because, for example, it may be the
15 case that whereas generally it doesn't make sense to invite a witness to
16 comment on a news report, it may be that the witness is a journalist and
17 there may be reason to put a news report. So, with respect, I think it
18 may have to be argued orally on a case-by-case basis, depending on the
19 relevance, the importance, and the significance of the evidence.

20 So I would caution against any overly broad or too restrictive
21 guide-lines. The Defence must have ample latitude to cross-examine.
22 This is a hallmark of a fair trial and as this Court has said quite
23 clearly, the intention is to uphold the high standards of international
24 law.

25 PRESIDING JUDGE RE: Mr. Cameron.

1 MR. CAMERON: I agree with Mr. Young's position, that whatever
2 rule you may seek to establish in this particular area as to the
3 propriety of putting certain pieces of seemingly unrelated evidence to a
4 particular witness in the normal course is not appropriate, but as
5 Mr. Young quite rightly points out there may be occasions when it is
6 appropriate and when it is relevant. And in part, that will be your duty
7 to determine the filter of relevance before something is either put to a
8 witness and admitted into evidence largely on a case-by-case basis with
9 reliance on the parties that they will not in the normal course try to
10 seek to try your patience with the constant offering of irrelevant and
11 inadmissible evidence. So it -- in my respectful submission, Mr. Young
12 is right to suggest to you that you may consider dealing with these
13 things during the course of the proceedings as opposed to with a rule in
14 advance.

15 [Trial Chamber confers]

16 PRESIDING JUDGE RE: We'll move to the next agenda item which I
17 think has been basically subsumed by that one which was procedure for
18 receiving documents into evidence at trial. Unless anyone has anything
19 specific and very brief on that point?

20 MR. HANNIS: Just to say --

21 PRESIDING JUDGE RE: Or I'll say forever hold your peace,
22 Mr. Hannis.

23 MR. HANNIS: Just a brief question, Your Honour, concerning how
24 exhibits will be marked and numbered I guess is something we should talk
25 about before we get into the trial, but we can do after it after the

1 break, if you prefer.

2 PRESIDING JUDGE RE: Okay. Move to item 7, it's a brief oral
3 order, Prosecution motion to reclassify previously confidential filing.
4 On the 12th of December, 2013, the Prosecution requested the
5 Trial Chamber to reclassify one of its prior confidential filings as
6 public. The formal title is: Prosecution request to reclassify the
7 response titled Prosecution response to the Sabra Defence request for
8 leave to reply to the Prosecution response to the Sabra Defence disclosure
9 motion of 11th of October, 2013, dated 5th of November, 2013. As there
10 is no reason for the filing to remain confidential, the Trial Chamber
11 instruct the Registry to reclassify as public this particular document.

12 I would like to move to item number 8, I'll address one issue
13 under item number 8 and then we may take a break. This is the issue of
14 state co-operation. There are -- asking counsel to address this possibly
15 after the break in relation to where we are in formulating potential
16 orders in relation to Lebanon. The first one I'm going to deal with is a
17 request by counsel for Mr. Badreddine. On the 24th of October, 2013,
18 counsel for Mr. Badreddine filed an ex parte and confidential request
19 before the Pre-Trial Judge, seeking orders directed to Lebanon to
20 co-operate with the Defence as required under Article 15(1) of the
21 agreement between the United Nations and the Government of Lebanon which
22 was annexed to Security Council Resolution 1757 of 2007. A public
23 version of the request was subsequently filed. The matter of this
24 request was transferred to the Trial Chamber on the
25 25th of October, 2013, with the case file.

1 Defence counsel for Mr. Badreddine were seeking orders directed
2 to Lebanon to co-operate with the Defence of Mr. Badreddine and to
3 provide them with specific information relevant to their investigations
4 relating to identifying the cell towers in use at the end of each
5 telephone call in relation to specific and identified telephone numbers.
6 The head of the Defence Office, Mr. Roux, first sent the request as
7 requested by the Defence of Mr. Badreddine to Lebanon on the
8 14th of May, 2013. On the 15th of November, 2013, I as the Presiding
9 Judge instructed the Registrar to write to the Lebanese government,
10 asking it to comply with the Defence request by the
11 6th of December, 2013, or to respond by the 27th of November, 2013, to
12 inform the Trial Chamber if there were any grounds or any legal basis
13 existed for not complying with the request.

14 On the 27th of November, 2013, the Lebanese authorities responded
15 procedurally but without addressing the substance of the request. On the
16 7th of January, 2014, counsel for Mr. Badreddine responded and annexed
17 proposed orders which the Trial Chamber requested them to do on the -- in
18 a meeting on the 6th of January, 2014. I place on the record that more
19 than 30 days has passed since the date the Trial Chamber set for the
20 Lebanese government to respond, that is, on the 6th of December, 2013.
21 The Trial Chamber is satisfied that the Badreddine request meets the
22 relevant legal requirement -- relevant criteria, sorry, and that counsel
23 for Mr. Badreddine have taken the necessary procedural steps to obtain
24 the information they're seeking, including making the necessary inquiries
25 of the Prosecutor.

1 We are satisfied that the Prosecution does not have the
2 information sought by counsel for Mr. Badreddine and that the Lebanese
3 authorities have not provided that information to them, as per the
4 request and the latest letter from the Registrar. The Trial Chamber is
5 therefore satisfied that an order can be made to the Government of
6 Lebanon under Rule 20(A) of the Rules of Procedure and Evidence,
7 directing it to co-operate with the Defence by providing the information
8 sought. The Trial Chamber will shortly issue formal orders to that
9 effect, directing the government of -- requesting the Government of
10 Lebanon to comply with this request. That will be done this week.

11 In relation to the observations filed which is -- forgive my
12 French accent [no interpretation] -- of the 7th of January, 2014, counsel
13 for Mr. Badreddine in their observations sought that this order be
14 reclassified. They filed it confidentially, they sought that it be
15 reclassified as public. For the record that's filing 1300. The
16 Trial Chamber directs that that filing of the 7th of January be made
17 public.

18 We note the time. We will adjourn for 20 minutes, 20 or so
19 minutes, and we will then -- unless Mr. Edwards has something urgent to
20 say.

21 MR. EDWARDS: Forgive me, Your Honour, yes, it is urgent. It's
22 just that the filing of the 7th of January was the filing itself. The
23 requested itself may be filed publicly.

24 PRESIDING JUDGE RE: Without the annexes.

25 MR. EDWARDS: In paragraph 7 we set out the details of the

1 annexes to that request which we request remain confidential and
2 ex parte.

3 PRESIDING JUDGE RE: You are quite correct. We mean in
4 accordance with paragraph 7, which is to reclassify the filing itself,
5 the requests or the observations, but not the annexes as set out in
6 paragraph 7; is that correct?

7 MR. EDWARDS: Very grateful. Thank you.

8 PRESIDING JUDGE RE: I'm told that 30 minutes is preferable.
9 We'll adjourn for 30 minutes and we will then move directly to I think
10 counsel for Mr. Sabra in relation to their request for co-operation
11 directed to Lebanon.

12 --- Recess taken at 12.06 p.m.

13 --- On resuming at 12.43 p.m.

14 PRESIDING JUDGE RE: I wish to move to the -- return to the issue
15 of state co-operation, and this concerns the applications filed by
16 Defence counsel for Mr. Sabra, seeking orders directed to Lebanon in
17 respect of a number of matters.

18 On the 16th of December, last year, we issued a decision in which
19 we dismissed but not definitively applications by the Defence counsel to
20 issue orders to Lebanon in respect to 29 requests for assistance referred
21 to in five of their motions. The Defence subsequently filed a request to
22 reconsider in relation to 11 of those matters, meaning, I take it, that
23 18 are not no longer pursued, but Mr. Young can address on that in a
24 moment.

25 We also ordered the Prosecutor to provide by the 19th of December

1 all necessary clarifications of 14 other requests for assistance, and the
2 Prosecutor to confirm by the same date whether it possessed any further
3 relevant information requested by counsel for Mr. Sabra in relation to 75
4 requests for assistance. We also asked counsel for Mr. Sabra to draft
5 and file any proposed orders they seek directed to Lebanon to co-operate
6 with the Special Tribunal in respect of any information outstanding from
7 their requests for assistance and for the Prosecutor to file any response
8 to any draft orders within three days.

9 Now, I just wish to say this. As you've seen, we are prepared to
10 issue orders where necessary. In relation to the motion filed by counsel
11 for Mr. Badreddine, not only did it meet the relevant standard but they,
12 as requested, have filed draft proposed orders which greatly assist the
13 Trial Chamber's work and would of course greatly assist the Government of
14 Lebanon in ascertaining exactly what they are supposed to comply with.
15 It is extremely important that there is precision in any order which is
16 to be directed to Lebanon, that any material is precisely identified. We
17 wish to expedite these matters. The Trial Chamber is sympathetic to the
18 position of Defence counsel in trying to obtain the material necessary
19 for their investigations. We wish to facilitate the matter and we wish
20 to act with expedition. We also note that you have filed a request for
21 certification for appeal in respect of some of these matters. Now, even
22 if we put those to one side, there is a lot of other material which isn't
23 the subject of the request for reconsideration or of request for
24 certification to appeal. We may decide against you, we don't know. We
25 may certify it for appeal; if we do, you would then have to wait for the

1 Appeals Chamber to issue a decision and come back and re-start the
2 process. So what we want to know where you are up to in this and what
3 the Prosecutor is doing.

4 Can you please address us, Mr. Young.

5 MR. YOUNG: Your Honour, I'm very grateful. That's the summation
6 of the situation. The reality is that we do wish to assist the Tribunal
7 by drafting the orders with the necessary precision required. We fully
8 intend to -- so to do. If it's Your Honour's position that this is the
9 time, even though there are still matters pending, if Your Honour's
10 position is this is the time to, as it were, get on with it, and to
11 deliver to Your Honours a series of provisional draft orders, certainly
12 we're prepared to do that, of course. I have to say that we have been
13 holding off for two reasons: Firstly, because, as Your Honour rightly
14 said, we have made an application in relation to reconsideration and
15 there's been the other filing in relation to appeal; and the second
16 reason why we have held off was to do with respect to the material that
17 the Prosecution have disclosed to us. In response to Your Honour's
18 orders, as you know the Prosecution have disclosed some information to us
19 and we're in the process of reviewing that. As Your Honour's correctly,
20 with respect, and rightly noted in your decision of the 16th of December,
21 when you said the Prosecution responded to the Trial Chamber's order of
22 the 20th of November, 2013, by filing a lengthy list of ERN's, this list,
23 however, Your Honour said is cumbersome, lacks specificity, is
24 meaningless to the Trial Chamber, and is unhelpful to the Defence. And
25 with respect, I think that sums up the situation correctly. So we are

1 being somewhat then hampered by that, but we are doing our very best and
2 we were holding off from drafting a composite series of orders before
3 Your Honours until we have had a chance, one, to review and, two, to see
4 Your Honour's decision on reconsideration. If Your Honours take the view
5 that it would be more expeditious to move things forward now, then we
6 will certainly provide a draft provisional list of orders with all the
7 precision that's required in the very near future.

8 PRESIDING JUDGE RE: As you appreciate, you filed a request for
9 reconsideration and certification for appeal. The Prosecutor filed its
10 response yesterday, so the Trial Chamber is clearly not going to make a
11 decision until it's reviewed it. I can say there is some merit in their
12 response and the way they have formulated their response to your request
13 for reconsideration. I'm saying that as the Presiding Judge and it's my
14 job to decide whether there should be reconsideration. I do see some
15 merit in their response to your submissions, and I'm speaking for myself
16 here. We emphasize it is your application, if you as Defence counsel
17 wish to pursue the matter, you have to provide us with the specificity
18 before we can make an order directed to a sovereign state. We do wish to
19 see the matters acted upon quickly, bearing in mind the trial is starting
20 next week, and these matters have been around for a long time. If you
21 wish to continue, we urge you to provide us with draft orders in relation
22 to whatever matters you can as soon as possible, as a matter of -- I'm
23 not going to use the word "urgency," because it's up to you. And you
24 will note we did not put in our order a date, a dead-line, we left it
25 entirely up to you to work out if and when you want to do it.

1 MR. YOUNG: May I say Your Honour has made that very loud and
2 clear and the message is received. The position is that I will ensure
3 that you have a series of draft, precise orders as soon as possible.
4 That will be done in relation to what we can do. In relation to the
5 history, with respect the Sabra team have been, if I may say, extremely
6 diligent in filing these notices over a long, long period of time. We
7 have been raising the issue of state co-operation almost every single
8 pre-trial or Status Conference with the Pre-Trial Judge. If Your Honour
9 looks at the history of it, Your Honour will see that we were diligent in
10 referring to this and drawing these matters to the attention of the
11 Pre-Trial Judge over many months and over the last year and a half. The
12 history speaks for itself and there has not been an order to date, and we
13 were anxious that the orders are made and are properly drafted. So you
14 will have these orders as soon as we can draft them.

15 PRESIDING JUDGE RE: Does the Prosecutor wish to respond?

16 MR. CAMERON: No, thank you.

17 PRESIDING JUDGE RE: Are there any other matters relating to
18 state co-operation that any of the parties wish to raise while we are on
19 this agenda item? Okay.

20 The next item is number 9, which is the possible joinder of the
21 case of the Prosecutor versus Hassan Habib Merhi to this case. The
22 relevant procedural background to this is that on the
23 20th of December, 2013, the Trial Chamber issued a decision to proceed to
24 trial in absentia against Mr. Merhi. Defence counsel and two co-counsel
25 have subsequently been appointed to represent him at trial. On the

1 30th of December, the Prosecution filed a request before the
2 Trial Chamber to join the case of Mr. Merhi to the case presently before
3 us. The Prosecution also requested in December that the Pre-Trial Judge
4 refer the question of joinder to the Trial Chamber, as the Merhi case is
5 currently before the Pre-Trial Judge according to the Rules of Procedure
6 and Evidence.

7 On the 2nd of January, that's last week, the Pre-Trial Judge
8 referred to the Trial Chamber under Rule 89(E) the issue of joinder of
9 the case, meaning that the Trial Chamber is now seized with the joinder
10 in both the Merhi case and the Ayyash case together. The Trial Chamber
11 met yesterday with counsel for -- newly appointed counsel for Mr. Merhi
12 and the head of the Defence Office to -- and Prosecution counsel,
13 Mr. Milne and Mr. Cameron, to discuss preliminary issues in this case,
14 that's the Merhi case. We will be scheduling a preliminary hearing on
15 the joinder issue next week, on Tuesday, the 14th of January, in the
16 afternoon in the Merhi case, not in the Ayyash case, that is for the
17 information of those here. The Prosecution will of course be attending
18 and I anticipate the head of the Defence Office will be there and counsel
19 for Mr. Merhi.

20 We have received submissions from the Prosecution on joinder. We
21 have yet to receive submissions from the Defence for the four accused in
22 the present case or of course the newly appointed counsel for Mr. Merhi
23 in the Merhi case. I would like to ask the Prosecutor to address the
24 Chamber on its present intentions and the ramifications to the progress
25 of the Ayyash case in the event that there is a joinder, and we emphasize

1 the Trial Chamber has not received submissions from Defence counsel in
2 either case and is not in a position to deliberate at the moment.

3 Mr. Cameron.

4 MR. CAMERON: Thank you, Judge Re. Using the hypothetical model
5 then that joinder may occur, if the issue is what will happen to the
6 progress of the Ayyash case, there are perhaps three models. The first
7 model is that it be -- and some of these will depend upon the timing of
8 the decision in respect of joinder. One model is that it be adjourned --
9 I think all three models it will necessarily require an adjournment for
10 Mr. Merhi's counsel to properly absorb the evidence in the case, and it's
11 just a question really of when that adjournment takes place. Does it
12 take place before the opening statements? Does it take place after the
13 opening statements? Or does it take place after the opening statements
14 and after some areas of evidence are called?

15 It's the Prosecution's position that the third option, if joinder
16 is to be effected, is the one which we would urge you to consider most
17 favourable, that is, after the opening statements are completed. We are
18 in a position to deal with some areas of evidence which are less
19 contentious, certainly, than other areas. And at some point we will
20 reach a dividing line between the fairly uncontentious evidence and the
21 more contentious evidence, and at that point you might well consider it
22 appropriate to consider an adjournment of the matter so that Mr. Merhi's
23 counsel can properly absorb, as I say, the evidence that has been most
24 recently provided to him, which will take some time.

25 As to how long the adjournment might be, I'm in of course your

1 hands. Yesterday during our informal conference the idea was floated
2 that an adjournment of something around a minimum of four months might be
3 appropriate, although I also indicated that if you were to canvass the
4 issue with my friends they might have a longer view of the propriety
5 of -- or the number of months. I think if there were to be joinder, I
6 think that if an adjournment of some sort inevitable, and the question
7 is, A, when that adjournment takes place; and B, for what length of time
8 the adjournment would be for? The Prosecution will do everything within
9 its power, given the nature of the proceedings, to assist Mr. Merhi's
10 counsel to proceed with his preparations in a way that is efficient. The
11 case is, if I may say, somewhat smaller than it was eight months ago when
12 my present friends were preparing for their case. I don't say that it's
13 not still a significant task for Mr. Merhi's counsel, but it is somewhat
14 smaller and with the assistance of the Prosecution, which we offer
15 freely, it may be that something not much more than four months is
16 required. But you'll have to hear from Mr. Merhi's counsel of course on
17 that issue.

18 I don't know if those are the issues that you wish me to address?

19 PRESIDING JUDGE RE: Thank you. Thank you, Mr. Cameron. Yes.

20 Mr. Haynes, do you have any submissions?

21 MR. HAYNES: It does actually occur to me that this is a matter
22 about which I may wish to make submissions that are based upon
23 instructions, and certainly as presently advised I would not advocate any
24 course of action which did not allow for the opening of the case next
25 week because that would afford me a very real opportunity to take some

1 instructions, as you know. You will appreciate that it may well be I
2 have a take a controversial position in relation to all this, and that is
3 that no suspension or adjournment is in the interests of the
4 participating victims. One of them has already died.

5 PRESIDING JUDGE RE: Are you able to tell us when you would be in
6 a position to obtain the necessary instructions to make your submissions,
7 which of course you may make in this very important matter?

8 MR. HAYNES: Yes, I would have said by the end of next week.

9 PRESIDING JUDGE RE: I move to counsel for the Defence, starting
10 with Mr. Hannis.

11 MR. HANNIS: Well, Your Honours, we have had discussions among
12 the four teams about a filing and whether we were going to have a joint
13 filing and what that will be, but I think the general position is that
14 joinder seems logical in this case and probably inevitable. But as to
15 what happens then, an adjournment, when and for how long, are questions
16 that I think are still open. And really that's more a question for the
17 team sitting in the audience than any of the rest of us four I think.

18 PRESIDING JUDGE RE: Mr. Korkmaz? Mr. Young? Mr. Hassan?

19 MR. KORKMAZ: [Interpretation] Your Honour, ladies and gentlemen
20 of the Bench, the Badreddine Defence has a somewhat nuanced approach. It
21 believes that it doesn't have to take a decision on the joinder or the
22 disjoinder of this case from the procedural standpoint. ⁵It doesn't
23 behoove it to in any way condone the situation that I would qualify as
24 disastrous in terms of the Prosecution, in terms of the administration of
25 justice. The case finds itself regarding the delayed indictment in

1 respect of Mr. Merhi filed on the 5th of June and confirmed by the
2 Pre-Trial Judge on the 11th of October, it's up to your honourable
3 Trial Chamber to draw the consequences of that. Not that it is
4 indifferent that Mr. Merhi be joined to the proceedings of the present
5 case. That the trial be held with or without Mr. Merhi is far from
6 anodyne for the Defence. The configuration would de facto be radically
7 different, but it's precisely the uncertainty in which the Defence finds
8 itself on this point that is truly unbearable and unacceptable to it.
9 The Defence believes that it's unacceptable for the trial to begin before
10 a decision on the motion for a joinder be given. This uncertainty has
11 lasted for too long. It has impacted proceedings now for over six months
12 and specifically since the 21st of June, 2013, when the OTP filed the
13 amended filing involving Mr. Merhi and the alleged conspiracy, and in
14 fact I would say since the 14th of September, 2012, date at which the
15 Prosecution informed us of the identity of Mr. Merhi by refusing to
16 disclose its intentions regarding proceedings against him.

17 ⁶Let me recall that ten hearings, letters, filings since the
18 14th of October; 2nd of October; 4th of October; 30th of October;
19 19th December; 23rd of May, 2013; 11th, 9th, 2013; 29th October; and
20 before you the 2nd December 2013. Of course it's not my intention to
21 recall or read extracts from these hearings where the Defence as well as
22 the PTJ had requested on several occasions to know what the Prosecution's
23 intents were regarding proceedings and cautioning the Prosecutor and the
24 PTJ on a possible failure or delay in filing that indictment.

25 Your Honour, members of the Bench, were faced with two

1 possibilities. Either you decide to join the Merhi case, and you'll have
2 no other option but to order an adjournment of the trial for Mr. Merhi's
3 Defence counsel to absorb the case and on the same occasion to allow the
4 Badreddine Defence and the other counsel of the accused to gain an
5 understanding of the Merhi case and because access to the latter was
6 denied to them and notorious that this adjournment will be solely down to
7 the delayed indictment of Mr. Merhi by the OTP. Either, second
8 alternative, you decide not to proceed with the Merhi joinder, in which
9 case in all likelihood we'll have two parallel proceedings with major
10 consequences. There's no other choice than to appoint a new
11 Trial Chamber to examine the Merhi case. ⁷It would be fully inequitable
12 and contrary to the principles of impartial justice for the Chamber
13 sitting in both cases in deferred matter should be unduly influenced by
14 deliberations concerning the same evidence that Defence did not have
15 access. The OTP would be unduly favoured in both cases, where it would
16 have sole access and benefit from catch-up sessions in the subsequent
17 trial, which would of course prompt many procedural incidents.

18 Your Honours, members of the Bench, in both cases it is within
19 your power and I would say your duty to decide that before the start of
20 the trial so that the Defence can know once and for all what to expect.
21 As things stand today, the Defence teams still do not have the
22 possibility to discuss the items of the case with Mr. Merhi's counsel for
23 confidential reasons. To start the trial before having rendered a
24 decision on the Prosecution's motion would be a fundamental error in
25 terms of the administration of justice. The trial would lose all

1 visibility and would be flawed with legal uncertainty. The Defence,
2 lastly, would wish to guard against the serious difficulties that would
3 necessarily be created by joinder taking place during the trial, and I
4 insist on this, an unprecedented situation in the minds of the Defence
5 which would transform the trial in a singularly hazardous experience.
6 The Defence believes here that it doesn't have to play the role of a
7 guinea pig in a precarious and lack of visibility operation. Thank you.

8 PRESIDING JUDGE RE: Just to observe, there are -- the
9 Trial Chamber has no application before it from anyone to adjourn the
10 proceedings. We're operating on the basis that the trial is in this case
11 is proceeding next week as ordered and as anticipated.

12 I also point out that the Trial Chamber received the Merhi case
13 on the 25th of November, 2013, and we made our decision on the
14 20th of December, 2013, to proceed in absentia. And at the same time we
15 were dealing with all the pre-trial matters in this case and 13 matters
16 which we had inherited from the Pre-Trial Judge, including disclosure,
17 stay of proceedings, and matters of state co-operation. So we have acted
18 as expeditiously as we possibly could in the circumstances.

19 Mr. Young, you wish to say something?

20 MR. YOUNG: Just to echo that in a way, Your Honours. With
21 respect, Your Honours have been placed in a difficult position. The
22 timetable is unfortunate to say the least, and really the people that you
23 really want to hear from with respect to -- are sitting in the public
24 gallery, our esteemed learned colleagues. And as Mr. Roux said, it's a
25 surreal situation whereby our colleagues and those that really -- and

1 should be addressing you are in the public gallery. They are not in
2 court. And with respect they need a reasonable time, I'm sure you will
3 agree, to -- to -- to prepare themselves to be in a position to make any
4 informed submissions if there is a reasonable possibility of joinder.
5 But I say the timetable is unfortunate because with respect to the
6 Prosecution we're now in January 2014. The Prosecution evidence that
7 they rely upon on Mr. Merhi is dated the -- the report is dated the
8 2nd of February, coincidentally the date after the in absentia decision,
9 the 2nd of February. So presumably the evidence in the case of Merhi
10 they had in 2011, but there we are.

11 All I say to Your Honours is you're in that situation; with
12 respect, it's a difficult situation. Mr. Cameron's right, he said there
13 are different options, and these are options you will have to obviously
14 consider with great care whether or not you allow the trial to proceed.
15 We see you clearly intend to in terms of all the openings, then of course
16 there is a different option, as Mr. Cameron has rightly said, to hear
17 some evidence already suggested it should only be uncontroversial
18 evidence or -- to go any further. And really, I think -- with respect, I
19 think those people that should be addressing you on that are not here and
20 present. There's little else I can say because as Your Honour knows we
21 haven't seen any written filing, I don't believe, from the Merhi team.
22 So at this stage there is nothing more I want to say.

23 PRESIDING JUDGE RE: Mr. Hassan.

24 MR. HASSAN: [Interpretation] Thank you, Mr. President. Regarding
25 the Oneissi Defence, we leave the decision on joinder to the

1 Trial Chamber; however, in case -- in the case of joinder, this will be a
2 burden to the Oneissi team because it will affect the evidence and the
3 accused Defence teams. It will also change the situation of the
4 telecommunication evidence, the witnesses, and other evidence. And
5 that's why I would like to ask the following: Why this delay after the
6 start of trial and proceedings? And we need to remember the Lebanese
7 case files. We have been asking for more than six months for those case
8 files until they were completed recently, even though they were at the
9 disposal of the Prosecutor. Why this delay? Why this burden is to be
10 held by or shouldered by the Defence teams? If we had all these
11 documents since more than a year, then we would have been able to deal
12 with this case. We have been talking about the fifth accused for more
13 than six months. Why the delay until now? Why did we add the fifth
14 accused recently? This is a very big burden to be shouldered by all the
15 Defence teams, and we foresee that we will have new submissions by the
16 Defence teams in case of a joinder and we will not be held responsible
17 for any delay because in case of joinder the strategy of the Defence team
18 also will change. Thank you.

19 JUDGE AKOUM: [Interpretation] What do you mean by the changes in
20 the proceedings?

21 PRESIDING JUDGE RE: You have to -- same language --

22 MR. HASSAN: No problem, no problem. Your Honour, no problem.

23 PRESIDING JUDGE RE: Just pause between ...

24 MR. HASSAN: [Interpretation] I'm not talking about hindering the
25 legal proceedings, but I'm saying that in case of changes, that will mean

1 that we will need more time. We will request more time. Thank you.

2 PRESIDING JUDGE RE: In relation to what you said, the -- one of
3 the Defence counsel said the time for submissions by counsel for
4 Mr. Merhi runs from the 2nd of January, so it would be two weeks from
5 then. We don't expect -- certainly don't expect -- but before I turn to
6 Mr. Roux -- I will -- the Trial Chamber's current thinking in relation to
7 scheduling is to have the preliminary hearing next Tuesday with counsel
8 for Mr. Merhi. We then would anticipate having possibly a joint hearing
9 with counsel in the Ayyash case and counsel in the Merhi case and the
10 Prosecutor several weeks after, as Mr. Young rightly points out when it
11 is hoped that Mr. Merhi's counsel will be in a position to make informed
12 submissions as to the position they can take. But until then we can't
13 give any further indication.

14 Mr. Roux, I understand you wish to make submissions?

15 MR. ROUX: [Interpretation] Yes, Your Honour. First and foremost,
16 with regard to the hearing that you are scheduling for next Tuesday, I'd
17 just like to clarify the fact that as far as I'm concerned the afternoon
18 I'm dealing with certain embassies in respect of co-operation for certain
19 teams. So if it would be possible to hold the hearing in the morning,
20 that would be preferable to me. This is just a suggestion I put to
21 Your Honours.

22 PRESIDING JUDGE RE: Can you indicate a time that would be most
23 suitable? I thought we discussed this at our meeting yesterday or the
24 day before.

25 MR. ROUX: [Interpretation] Yes, but in the meantime I have

1 received positive responses from two states that I had gone to. So if we
2 can hold it in the morning at 11.00, then that would be suitable for
3 everybody.

4 My submissions. Well, it won't bear upon the merits that were
5 delved into by the various counsels that have taken the floor before me,
6 but I would like to draw your attention on another issue all together.
7 Everybody has said they don't -- they can't address the Court now, but
8 you just -- in this hearing you have just talked about procedural
9 matters. Now, if you effect the joinder between Merhi and Ayyash cases,
10 you're going to be imposing upon my learned friends who are currently in
11 the public gallery, impose upon them certain decisions that were taken in
12 ⁸their absence, while they were silent witnesses, if you like. And
13 earlier on I heard a very entusing debate between two eminent common law
14 legal experts, but we're not in a common-law court. We are in an
15 ⁹international tribunal, and Article -- well, Rule 3 of our RPE, and in
16 that Tribunal we apply international principles, inter alia, the general
17 rules of international criminal proceedings but also the Lebanese
18 Criminal Code. I mean, is it worth reminding you of that fact? And for
19 me the international criminal law is hybrid between two wonderful bodies
20 of law, common law and civil law, to name them. The counsel that I have
21 appointed, these are counsel that belong to the civil law tradition and
22 obviously they have something to say in respect of rules of proceedings
23 that we are establishing. So how do they -- how are we going to deal
24 with that when the trial gets underway? Are you going to interrupt it to
25 give them a leave to address the Court and thereby modifying the Rules of

1 Procedure and Evidence that you are in the throes of establishing? How
2 are we going to muddle through with that state of affairs? This is one
3 of the questions I put before you. And I think that nobody can vacate
4 the merits of this issue, the underpinnings of this question, namely, why
5 ¹⁰did the OTP -- why has the OTP put trial proceedings in this terrible
6 state of affairs? It's only the OTP that has the answer to that
7 question, but it's a serious state of affairs in my view.

8 PRESIDING JUDGE RE: Mr. Roux, the order we were or the
9 guide-lines we were contemplating making we will make before the start of
10 trial are under Rule 130 which relate to the conduct of the proceedings,
11 which are of course in accordance with the Rules of Procedure and
12 Evidence, which as you rightly point out are a hybrid international
13 criminal law regime and they won't of course deviate from what is
14 permissible under the rules. But tell me this: Are you suggesting that
15 the Trial Chamber should seek submissions from Mr. Merhi's counsel in
16 another case as to whether there is anything he would wish to submit in
17 relation to Rule 130 at this point? Is that a submission you are making?
18 Because if it is, please make it and I'd ask the Prosecutor and the other
19 parties to respond whether or not they believe it would be appropriate.

20 MR. ROUX: [Interpretation] That's exactly so. You fully
21 ¹¹understood the import of my submission. I think that if we are
22 discounting proceedings and procedures, I think that everybody who's
23 likely to get involved in the proceedings should be given leave to make
24 submissions and this is exactly how you put it, Your Honour.

25 PRESIDING JUDGE RE: Before I turn to the Prosecutor for a

1 response, do Defence counsel wish to say anything in response to
2 Mr. Roux's submission on that point?

3 Mr. Haynes is remaining silent.

4 Mr. Cameron? Mr. Milne?

5 MR. CAMERON: You've had the benefit of submissions on the
6 guide-lines that you hope to issue in the near future from both
7 experienced common law and civil law counsel. As you quite properly
8 point out, the Merhi matter is not yet joined to the Ayyash matter.
9 Those decisions that you make in respect of the Ayyash matter are
10 appropriately delineated by the submissions of the parties and not
11 potential expected parties in the future who are not yet appropriate or
12 have standing before you today. If -- if in the event that there is
13 something -- if the model of joinder is accepted, for the moment as a
14 hypothetical model, and if there are additional submissions that
15 Mr. Merhi's counsel wish to make in future as to the guide-lines, then he
16 will of course be entitled to address you and to offer whatever
17 assistance he can to you and perhaps some modifications at that time.
18 They are not tablets written in stone, there are rules that you have the
19 capacity and power to adjust as you see fit. So it would be my
20 submission to you to limit the scope of the submissions at present to the
21 parties and to accept, if joinder is your ultimate decision, any further
22 submissions from Mr. Merhi's counsel when the time is appropriate.

23 PRESIDING JUDGE RE: I forgot to add when addressing Mr. Roux a
24 moment ago, Rule 130, conduct of proceedings, Rule 130(A) says:

25 "The Trial Chamber after hearing the parties may give directions

1 on the conduct of the proceedings as necessary and desirable to ensure a
2 fair, impartial, and expeditious trial, these may include, inter alia,
3 orders relating to disclosure and directions to the parties regarding
4 communication between the parties and witnesses ..."

5 All I say is -- I neglected to say a moment the guide-lines are
6 essentially administrative in nature rather than any modification of our
7 hybrid Rules of Procedure and Evidence. Unless there is anything else on
8 that matter, I can turn to the final one we have on the agenda, number
9 10, which is submissions from the parties concerning effective
10 disclosure, OCR, in brackets, which means optical character recognition.
11 This relates to a submission filed by counsel for Mr. Sabra, that's
12 Mr. Young, before the Pre-Trial Judge on the 21st of October, 2013. This
13 is one of the 13 matters we inherited when we got the case file a week
14 later. In relation to -- the title is: Request for reconsideration of
15 the decision of the -- on the Sabra motion for effective compliance with
16 the Prosecution's disclosure obligations and further request for
17 effective disclosure of the scanned documents. It relates essentially to
18 the ability of Defence counsel to search for material which has been put
19 into the system using optical character recognition and which software
20 package should be employed.

21 Mr. Young indicated that he wished to address the Trial Chamber
22 on this matter, and we are anxious to ensure some progress on this
23 matter. The way we dealt with it was when we received it, in effect, it
24 was a request to reconsider a decision of the Pre-Trial Judge. We held a
25 meeting between the parties to try and find common ground and a report

1 was ordered from what we thought was a neutral party in the Tribunal's IT
2 section running tests on certain documents to find out which was the
3 correct software package to use. And we are awaiting a report from
4 Mr. Young and the Prosecutor.

5 MR. YOUNG: Your Honour, thank you. I note the time. Perhaps we
6 could deal with this in a short fashion. Your Honour's rightly
7 summarized the position that we held a meeting. At a meeting I think I
8 drew Your Honour's attention to the fact that in searching some of the
9 massive amount of material, we realized that the search facility wasn't
10 picking up items that -- information which actually existed on the
11 statements. And Your Honour wondered if it was just an instance of one
12 or two examples, and so I suggested an exercise be done by an independent
13 body. That was done. And we have a report from the Registry from the
14 ISS which is dated the 2nd of December, and with respect vindicates
15 entirely what the Defence was submitting because when they looked at the
16 different software packages they found that the Versus one which the
17 Prosecution were using only found just 50 per cent of the key words which
18 were searched over a large selection independently selected by the ISS.

19 Your Honour, this is of real concern to us because in this case
20 where there is a massive amount of material it's fundamentally important
21 to the Defence that when we are searching this database we search with
22 confidence so that when we are looking for key words we can search and
23 rely upon the results and this causes us great concern because the
24 independent report from the Registry vindicates the concern that we had,
25 that when we're searching, however well we search we won't succeed

1 because the wrong software was used by the Prosecution. In an effort to
2 assist, Your Honour, I yesterday held a -- I'm very grateful to them
3 the -- held a meeting with the chief information officer,
4 Mr. Valentin Prat and also with Ms. Diane Carter, the head of information
5 management, and Mr. Drazen Bonjas, who I think was the author of the
6 report, and that was very helpful. I've also, if I may say, spoken
7 briefly to my learned friend Mr. Milne and we're anxious to try and move
8 this forward, and I would respectfully suggest to Your Honour that this
9 matter is dealt with by way of a meeting between the parties and between
10 those that I met yesterday to see if a solution can be found, some sort
11 of expeditious solution because if there is no reasonable solution I will
12 be submitting that certainly as far as the English and French
13 documentation which is typed, not handwritten, that may well have to be,
14 unless there is a good solution, all re-OCR'd. But what I'm suggesting
15 in the short term now is that Your Honour allows the parties to have this
16 meeting to look at all the different possibilities. Mr. Milne tells me
17 there are a number of complexities that we will have to consider and I
18 think it's probably best done not in this environment but with the
19 experts and those who understand the different software packages.

20 MR. MILNE: Your Honour, very briefly, yes, I would agree with my
21 learned friend that we need to meet to discuss this. I think the only
22 single word I would take issue with is wrong package. It's a different
23 package. We understand the concern of the Defence. We're not in any way
24 dismissing that. We will do what we can to try to allay their fears.
25 With that in mine mind, we will arrange a direct meeting between

1 ourselves and the Defence with the assistance of the Registry staff
2 involved.

3 PRESIDING JUDGE RE: Meetings before the parties especially on
4 this issue are very much to be encouraged so we can clear that issue from
5 the agenda for today?

6 MR. YOUNG: Yes.

7 PRESIDING JUDGE RE: Thank you.

8 I just wish to return for a moment to the first issue on the
9 agenda which was that of the opening statements, and I've received
10 indications from Mr. Haynes, the Prosecutor, and counsel for
11 Mr. Badreddine and Oneissi that they will be having opening statements.
12 I just want to clarify, the language will be English for the Prosecutor,
13 Legal Representatives of the Victims; French for Mr. Badreddine; Arabic
14 for the Oneissi team? Yes?

15 MR. HASSAN: [Microphone not activated]

16 THE INTERPRETER: Microphone.

17 MR. HASSAN: [Interpretation] Concerning the Oneissi Defence team,
18 Your Honour, I request your authorization to use the three official
19 working languages of the Tribunal because the lead counsel is French, I'm
20 an Arabic speaker because it's my mother tongue, and
21 Mr. Philippe Larochelle speaks in English and in French and he prefers to
22 address you in English.

23 PRESIDING JUDGE RE: Mr. Hassan, you don't need to request
24 authorization to use the three working languages. I made an error. You
25 said Mr. Courcelle-Labrousse before, but if you're both addressing I just

1 want to clarify we're using the three official languages for the opening.
2 That's the first thing. The second one is the use of electronic or
3 audio-visual aids. We know the Prosecutor will be --

4 MR. CAMERON: Yes, that's correct, Your Honour. Although it -- I
5 must say, it's not going to be particularly fancy. It will be within the
6 normal course of PowerPoint presentation. It will be videos and pictures
7 and slides, nothing beyond that I don't think.

8 MR. HAYNES: We will not be using any audio-visual aids. I hope
9 our submissions are fancy, but they will be in English and Arabic.

10 PRESIDING JUDGE RE: Mr. Korkmaz and Mr. Hassan, can you just
11 address us whether you intend to use anything other than your voice?

12 MR. KORKMAZ: [Interpretation] We will only be using voice,
13 Your Honour, but we will obviously reserve the possibility to draw upon
14 all these wonderful technologies such as PowerPoint during our genuine
15 opening statement, and with the Merhi case, however, this poses a problem
16 because we don't know whether you will be raising this issue in
17 statements. We'll see when that comes.

18 PRESIDING JUDGE RE: Mr. Korkmaz -- I'm sorry, Mr. Hassan.

19 MR. HASSAN: [Interpretation] We will use oral opening statements.
20 We will not use any audio-visual equipment or aids.

21 [Trial Chamber and Legal Officer confer]

22 PRESIDING JUDGE RE: One further matter Mr. Hannis raised before
23 the issue of the numbering of exhibits at trial, that issue has been
24 discussed with CMSS, et cetera. Just speak to them and they will tell
25 you where we're at in terms of a decision, but there will be nothing

1 surprising, P1, 2, 3, 4, et cetera, D1, 2, 3, 4, et cetera, and for the
2 victims, V1, 2, 3, 4, et cetera. Are there any other matters which
3 anybody wishes to raise, apart from Judge Nosworthy?

4 [Trial Chamber confers]

5 PRESIDING JUDGE RE: The court will adjourn.

6 --- Whereupon the Pre-Trial Conference
7 adjourned at 1.35 p.m.

¹ERRATA:

Following the Verification of Interpretation of the Transcript between the interpreted English against the original French speech, the Language Services Section of the Tribunal has made the following corrections in the transcript:

- Correction on Page 3 line 21:

"it will be the Defence Office that will be asking your leave **for Mr Hannis** to"

² **- Correction on Page 9 line 24:**

"I just wish to express my **strongest reservations** to remind you that"

³ **- Correction from Page 9 line 25 to Page 10 line 1:**

"the Merhi team that I have appointed is currently finding itself in the public gallery **and** cannot attend these proceedings, "

⁴ **- Correction on Page 10 lines 3 to 6:**

"I'd like to say that the Merhi team **expresses its strongest reservations** about the fact that witnesses will be heard, as we've just heard, **while it cannot be in the courtroom to provide cross-examination**"

⁵ **- Correction from Page 50 line 22 to Page 51 line 3:**

"It doesn't **behave to** it to in any way condone the situation **of the Prosecutor** - that I would **describe as disastrous in terms of the administration of justice** - **of the case** regarding the delayed indictment in respect of Mr. Merhi filed on the 5th of June **2013** and confirmed by the Pre-Trial Judge on the 11th of October

2013. It's up to the Prosecutor to face up to his responsibilities and your honourable Trial Chamber to draw the consequences of that."

⁶ - **Correction on Page 51 lines 17 to 20:**

"Let me **remind you that there have been** ten hearings, letters, filings since the 14th of **September**; 2nd of October **2012**; 4th of October **2012**; 30th of October **2012**; 19th December **2012**; 23rd of May, 2013; **3rd July 2013**; **11th September 2013**; 29th October **2013**; **and** before you the 2nd December 2013 **at the TC Pre-Trial Conference.**"

⁷ - **Correction on Page 52 lines 11 to 17:**

"**Indeed**, it would be fully inequitable and contrary to the principles of impartial justice that the Chamber sitting in both cases **at different times** be unduly influenced by deliberations concerning the same evidence that Defence did not have access to. **What's more, the** OTP would be unduly favoured in both cases, where it would have sole access and benefit from **what I could describe as** catch-up sessions in the subsequent trial, which would of course prompt many procedural incidents."

⁸ - **Correction on Page 57 line 12:**

"their absence, while they were silent **observers**, if you like."

⁹ - **Correction on Page 57 lines 15 to 18:**

"international tribunal, and Article -- well, under Rule 3 of our RPE, and in that Tribunal we apply international principles, **and more particularly**, the general **principles** of international criminal **law and international criminal procedure** but also the Lebanese Criminal Code."

¹⁰ - **Correction on Page 58 lines 5 to 7:**

"did the OTP -- why has the OTP put trial proceedings in this **situation**? It's only the OTP that has the answer to that question, **but the situation is serious.**"

¹¹ - **Correction on Page 58 lines 21 to 22:**

"understood the import of my submission. I think that if we are

discussing proceedings and procedures, I think that everybody who's".