

BEFORE THE TRIAL CHAMBER
SPECIAL TRIBUNAL FOR LEBANON

Case No.: STL-11-01/T/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge
Judge Nicola Lettieri, Alternate Judge

The Registrar: Mr Daryl Mundis

Date: 17 April 2015

Filing party: The Defence - Badreddine

Original language: French

Classification: Public

THE PROSECUTOR
v.
SALIM JAMIL AYYASH
MUSTAFA AMINE BADREDDINE
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

**Request for the Admission of a Document and Submissions in favour
of the Admissibility of Diplomatic Cables Published on the WikiLeaks Website**

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I. Introduction

1. On 26 March 2015, during the cross-examination of Mr Fouad Siniora, the Defence for Mr Mustafa Amine Badreddine (the “Defence”) intended to confront this Prosecution witness with a cable of 6 July 2007 from the United States Ambassador to Beirut which was published on the WikiLeaks internet site.¹ That cable reported on a meeting held the previous day between the American Ambassador to Lebanon, Mr Jeffrey Feltman, and the Lebanese Minister of Justice, Mr Charles Rizk, who was a member of the Government of Mr Siniora who, at that time, was Prime Minister of Lebanon. Following an objection from the Prosecution regarding the use and admissibility of that document,² the Trial Chamber decided not to rule immediately on the admissibility of the cable, while authorising the Defence to ask any questions based on its content provided no direct reference was made to it.³ As the Defence insisted that the cable in question be added to the case file as Defence evidence, the Chamber invited the Defence to put forward written submissions for that purpose.⁴

2. In accordance with that invitation, and pursuant to Rule 149 of the Rules of Procedure and Evidence (the “Rules”), while duly mindful of Rule 162 of the aforementioned Rules, the Defence requests that the Chamber find the disputed cable admissible and authorise its inclusion in the case file as evidence resulting from the cross-examination of Mr Siniora. The Defence will demonstrate hereinafter that the Prosecution’s objection is not founded, with regard to both the argument relating to the authenticity of that document and to that raising the unlawfulness of its initial disclosure. It will also demonstrate that the criteria for the admissibility of evidence, namely relevance and probative value, have been met in the case at hand.

3. The Defence submits that there is nothing that prevents, in principle, the WikiLeaks diplomatic cables from being admitted and that, therefore, an *in concreto* approach should be adopted, as with any other official document. The Chamber will then be able to determine the weight that should be given to the content of the document thus admitted. The WikiLeaks

1. STL, *The Prosecutor v. Ayyash et al.*, STL-11-01, transcript of the hearing of 26 March 2015, 20150326_STL-11-01_T_T136_OFF_PUB_FR_1-107 (hereinafter “TS (FR)”), p. 87 et seq.; *Câble diplomatique du 6 juillet 2007* », 1DT2-0312-1DT2-0317, no. 55 on the Defence Exhibit List, available at the following link: https://www.wikileaks.org/plusd/cables/07BEIRUT1005_a.html.

2. TS (FR), pp. 87-89.

3. TS (FR), pp. 90-91 and 92.

4. TS (FR), pp. 105-106.

diplomatic cables can, as such, contribute to the ascertainment of the truth before the international criminal tribunals and, at present, the emergence of a line of judicial reasoning can be detected in this regard.

II. Considerations on the issue of the authenticity and unlawfulness of the initial disclosure of the diplomatic cables published by WikiLeaks

4. The Defence intends to commence by responding to the questions raised by the Prosecution's objection, namely the authenticity and unlawfulness of the initial disclosure, concerning factual considerations which are specific to all the cables published by WikiLeaks.

A. Considerations regarding the authenticity of the diplomatic cables published by WikiLeaks

1. Factual considerations on the diplomatic cables published by WikiLeaks and their authenticity

5. The term "Cablegate" commonly refers to the publication at intervals, from 2010 to 2011, by a non-governmental and non-profit organisation known as "WikiLeaks", of 251,287 classified or unclassified cables which had been sent to the US State Department by 274 US diplomatic missions and disseminated by WikiLeaks as a result of leaks. Reputable newspapers, namely *The New York Times*, *The Guardian*, *El País*, *Der Spiegel* and *Le Monde*, were associated with that publication.

6. It is notable that, according to *The New York Times*, redactions were made in consultation with the US State Department. In this respect, the newspaper stated:

"The Times, after consultations with the State Department, has withheld from articles and removed from documents it is posting online the names of some people who spoke privately to diplomats and might be at risk if they were publicly identified⁵.

After its own redactions, The Times sent Obama administration officials the cables it planned to post and invited them to challenge publication of any information that, in the official view, would harm the national interest. After reviewing the cables, the officials — while making clear they condemn the publication of secret material — suggested additional redactions. The Times agreed to some, but not all. The Times is

5. S. Shane and A.W. Lehren, Leaked Cables Offer Raw Look at U.S. Diplomacy, *The New York Times*, 28 November 2010, available at the following link:
http://www.nytimes.com/2010/11/29/world/29cables.html?_r=3&bl.

forwarding the administration's concerns to other news organizations and, at the suggestion of the State Department, to WikiLeaks itself.”⁶

7. The State Department also acknowledged publicly that their cables had been leaked, thus recognising the authenticity of the WikiLeaks cables, as can be seen from the following statements:

“I will not comment on or confirm what are alleged to be stolen State Department cables. But I can say that the United States deeply regrets the disclosure of any information that was intended to be confidential (...). (...) [W]e are taking aggressive steps to hold responsible those who stole this information.”⁷

[W]e consider it regrettable that the information that was meant to be confidential has been made public.⁸

[S]omebody inside the United States Government who has authorized access to this material, downloaded it and passed it to someone who is not authorized to have it. That is a crime and we are investigating that crime and we'll hold the people responsible fully accountable.⁹

Fundamentally, the WikiLeaks incident began with an act of theft. Government documents were stolen (...).”¹⁰

8. Lastly, an individual, the soldier previously known as Bradley Manning, was convicted in July 2013 by an American military court of having disclosed classified cables to WikiLeaks, as the Prosecution itself recalled.¹¹ The findings of the Court, dated 15 August

6. A Note to Readers: The Decision to Publish Diplomatic Documents, *The New York Times*, 28 November 2010, available at the following link: <http://www.nytimes.com/2010/11/29/world/29editornote.html>.

7. H. Clinton, Remarks to the Press on Release of Purportedly Confidential Documents by Wikileaks, *US Department of State*, 29 November 2010, available at the following link: <http://www.state.gov/secretary/20092013clinton/rm/2010/11/152078.htm>.

8. H. Clinton, Clinton's Town Hall Meeting at Eurasian University in Astana, *Consulate General of the United States, Kazakhstan*, 30 November 2010, available at the following link: <http://almaty.usconsulate.gov/st-11-30-10.html>.

9. P.J. Crowley, Daily Press Briefing, *US Department of State*, 1 December 2010, available at the following link: <http://www.state.gov/r/pa/prs/dpb/2010/12/152235.htm>.

10. H. Clinton, Remarks by Secretary of State Clinton on Internet Freedom, *US Department of State*, 15 February 2011, available at the following link: <http://translations.state.gov/st/english/texttrans/2011/02/20110215155718su0.3556896.html#axzz3VyIKEEQ7>.

11. TS (FR), p. 89, lines 1-3. It should also be recalled that Bradley Manning was tried following a prolonged period of solitary confinement which was condemned by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, as a violation of his right to physical, mental and moral integrity, pointing out that solitary confinement can constitute a violation of Article 7 of the International Covenant on Civil and Political Rights and is one of the acts defined at Article 1 or 16 of the Convention Against Torture. See United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez Addendum, A/HRC/19/61/Add.4, 29 February 2012, para. 170, available at the following link (in English only):

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A_HRC_19_61_Add.4_EF_Sonly.pdf

2013, explicitly confirm the scale and source of the cables, and also the fact that they were disclosed to WikiLeaks:¹²

“2. The Court finds beyond a reasonable doubt that:

(...)

(2) the intelligence PFC Manning caused to be published on the internet included (...) the more than 250,000 cables from the Department of State Net-Centric Diplomacy database (DOS NCD) charged in specification 12 of Charge II,

(...)

(3) for specifications 4, 6, 8, and 12 of Charge II, the Court finds that PFC Manning knowingly converted the records and information therein, by sending them to WikiLeaks.”

9. Moreover, the drafting of the cables follows a procedure set out in a manual created and published by the US State Department.¹³ It must indeed be noted that those cables are compatible with the drafting procedures as set out in that manual.

10. The Defence submits therefore that there is little doubt as to the authenticity of those cables, and in particular the cable of 6 July 2007 in question, particularly in light of the fact that renowned newspapers considered them sufficiently credible to publish them, the reaction of the US Government following their publication, and the conviction of soldier Manning for having transmitted the documents to WikiLeaks. The fact that that government, as the Prosecution pointed out,¹⁴ refused to confirm or deny that the cables were authentic is a perfectly understandable attitude from a government encountering such leaks and therefore does not affect that finding, quite the contrary. The case law cited by the Prosecution in this respect is entirely irrelevant.

12. United States Army First Judicial Circuit, *United States v. Manning, Bradley E., PFC*, Special Findings, 15 August 2013, available at the following link: <https://freedom.press/sites/default/files/Manning-verdict-special-findings.pdf>.

13. 5 FAH-1 H-600 Preparing Diplomatic Notes, *U.S. Department of State Foreign Affairs Manual Volume 5 Handbook 1 Correspondence Handbook*, available at the following link: <http://www.state.gov/documents/organization/89308.pdf>; 5 FAH-1 H-620 Preparing Diplomatic Notes, *U.S. Department of State Foreign Affairs Manual Volume 5 Handbook 1 Correspondence Handbook*, available at the following link: <http://www.state.gov/documents/organization/89306.pdf>.

14. TS (FR), p. 88, lines 17-19.

2. Legal considerations on the question of the authenticity of the diplomatic cables published by WikiLeaks

11. In support of its objection, the Prosecution refers to a decision of the US Federal District Court of Columbia dated 23 July 2012¹⁵ and appears to infer from it that the US State Department did not acknowledge the source of the WikiLeaks cables.¹⁶ This in fact is the only conclusion, if proof were necessary, that might be drawn from this, as this decision, for the rest, is entirely without relevance.

12. That decision concerns an administrative action for the disclosure of 23 cables brought against the State Department under the Freedom of Information Act in which the State Department invoked the exemption provided by the law in respect of sensitive information or information relating to national security. The plaintiff argued that this exemption was not binding as the cables in question were already in the public domain after being published by WikiLeaks and because the State Department had already acknowledged their authenticity.

13. The Court found in favour of the State Department on the grounds that:

- a) the exemption requirements had been met, namely that the cables were properly classified and that the non-authorised disclosure of the information could reasonably be expected to result in identifiable damage to national security (in fact, especially for the conduct of foreign affairs).
- b) the doctrine of prior disclosure did not apply in the case at hand as it concerns the *official* disclosure in the public domain and because the fact that the information was already in the public domain does not necessarily mean that its *official* disclosure would not be prejudicial. In particular, the plaintiff had failed to demonstrate that the Executive had officially acknowledged that the specific information at issue was part of the WikiLeaks disclosure.

14. It is clear that this decision discusses at this point criteria that are specific to US administrative legislation, not criteria for the admissibility of evidence before an international criminal tribunal. However, firstly, this Tribunal is not bound by the apparent American

15. District Court of Columbia, *American Civil Liberties Foundation v. Department of State*, 11-01072 (CKK), Memorandum Opinion, 23 July 2012.

16. TS (FR), p. 88, lines 17-23.

classifications; secondly, the use of those documents as evidence before an international tribunal is not the same as their *official* disclosure by the United States. The Tribunal is neither the arm of American justice nor the guarantor of American interests. The potential prejudice to a State does not constitute a criterion for the admissibility of evidence. If that were the case, the ascertainment of the truth before the international criminal tribunals would be a rare thing. Therefore, neither of those criteria is relevant in order to rule on the question of the admissibility of the disputed cable.

15. The Defence submits that the fact that there has been no official acknowledgement from the US Government regarding the WikiLeaks cables does not preclude the cables from being genuine. Moreover, no one has claimed that the cables are *not* authentic. As the Defence has already pointed out, it appears that the State Department has in reality acknowledged that all the cables did indeed result from a leak. Furthermore, those cables bear sufficient indicia of reliability, notably by dint of the fact that they comply with State Department drafting guidelines, that their authenticity cannot be seriously challenged.

16. To require the State Department to individually authenticate each cable, as the American decision did, let us recall, in the entirely different context of the doctrine of prior disclosure, would be tantamount to asking the impossible of the Defence in light of State Department policy which is justified solely by political considerations, on which the issue of the ascertainment of the truth has no bearing. The Defence refers in this respect to the decision of the English High Court rendered on 11 June 2013 in the case of *Bancoult v. Secretary of State* which, with regard to the admissibility of a WikiLeaks diplomatic cable, found that the High Court was not bound by the government policy to neither confirm nor deny the authenticity of leaked cables, and that, in any event, in the circumstances of the case at hand the interests of justice would take precedence, insofar as the document had been in the public domain for a long time even if it was the result of an unlawful act.¹⁷ On appeal, the Court confirmed this aspect of the decision, finding that the use of the cable before the court could not be understood as authenticating the cable or overriding the “neither confirm nor

17. England and Wales, High Court of Justice (Administrative Court), *The Queen (on the application of Louis Olivier Bancoult) v. Secretary of State for Foreign & Commonwealth Affairs* [2013] EWHC 1502 (Admin), 11 June 2013 (hereinafter “*Bancoult*, High Court of Justice”), para. 28.

deny” policy and that in light of the nature of the information and its prior disclosure in the public domain, its disclosure as part of those proceedings could not be prejudicial.¹⁸

17. The Defence is not unaware of the decision of 13 June 2013 rendered before the Extraordinary Chambers in the Courts of Cambodia in the 002 case, in which the Trial Chamber dismissed the requests for the diplomatic cables originating from the WikiLeaks website to be tendered into evidence on the ground that, *inter alia*, it was unable to conclude that those documents were authentic as they did not originate officially from the US State Department.¹⁹ The Defence notes, however, that this decision was taken before soldier Manning was convicted and that the arguments of the parties did not address the issue of authenticity. It also notes that the decision covered non-confidential cables, with one exception, for which it was possible to obtain a certified copy from the State Department, the Chamber having noted that that process was likely to be lengthy and that the evidence could not therefore be obtained within a reasonable time and whereas those cables, according to the Chamber, were repetitive or irrelevant. The Chamber therefore was not faced with a situation whereby its decision would in effect exclude from the outset exceptional evidence that could contribute towards ascertaining the truth. In any event, the Defence hereinafter will refer to international jurisprudence that points in the opposite direction.

B. Considerations on the unlawfulness of the initial disclosure of the diplomatic cables published by WikiLeaks

18. In the alternative, the Prosecution, relying on Rule 162 of the Rules, expresses concern as to the impact that the admission of evidence obtained as a result of a criminal act would have on the integrity of the proceedings.²⁰ In this respect, the Defence submits that once the documents have entered the public domain, any person using them is not committing a crime, *a fortiori* if they are not subject to US law. The Defence notes, moreover, that to the best of its knowledge *The New York Times* has not been prosecuted in the United States for having published and commented on the WikiLeaks cables. Moreover, the Defence is not aware of

18. England and Wales, Court of Appeal (Civil Division), *The Queen (on the application of Louis Olivier Bancoult) v. Secretary of State for Foreign & Commonwealth Affairs*, [2014] EWCA Civ 708, 23 May 2014 (hereinafter “*Bancoult*, Court of Appeal”), para. 73.

19. ECCC, Case File 002/01, Decision on the Co-Prosecutors’ and KHIEU Samphan’s Internal Rule 87(4) Requests concerning US Diplomatic Cables (E282 and E290) and their respective responses (282/1 and 290/1), E282/2, 13 June 2013, para. 7.

20. TS (FR), p. 88, line 24, to p. 89, line 7.

any precedent whereby such cables were excluded as evidence in a foreign or international court on the ground that they were allegedly obtained in violation of American law. Moreover, this Tribunal is certainly not the guarantor of compliance with US law.

19. Furthermore, the Defence submits that the values protected by US legislation in terms of confidentiality are not so far-reaching as to possibly compromise the proceedings and *seriously* harm their integrity, within the meaning of Rule 162 of the Rules, were the cable in question to be admitted. A substantial section of world public opinion even believes that WikiLeaks fulfills a worthwhile mission with regard to freedom of information and public transparency.

20. The Defence also submits that, for the reasons it has already set out above regarding authenticity, the WikiLeaks cables were not obtained by means which cast *substantial* doubt on their reliability within the meaning of Rule 162 of the Rules. This falls well short of amounting to information obtained through torture or hypnosis or in violation of the right to a fair trial.

21. Furthermore, the Defence refers to the *Bancoult* case, in which the High Court had dismissed an objection founded on the fact that the documents had been obtained unlawfully, considering that they had been widely published and thus were “before the court”.²¹ For the High Court, the extensive prior disclosure of the document meant that further disclosure was not damaging, adding that insofar as no offence had thus been committed, the fact that an offence might have been committed by someone on the first disclosure should not prevent its use in those proceedings.²²

22. The Defence also intends to recall the reasoning adopted by the Court of Appeal in the same case with regard to diplomatic inviolability as, although that issue is not relevant before this Tribunal,²³ it can be extended, by analogy, to the question of the unlawfulness of the initial disclosure. For the Court of Appeal, if a document has found its way into the hands of a third party, even as a consequence of a breach of inviolability, it is considered *prima facie*

21. *Bancoult*, High Court of Justice, para. 23.

22. *Ibid.*, para. 36.

23. The Tribunal is not the arm of any State party to the Vienna Convention on Diplomatic Relations (1961) and diplomatic inviolability can only be opposed in the tribunals of the receiving State of a mission which might wish to obtain a document by means of coercion. In any event, the Prosecution would not have standing to raise such a question, which could only be raised by the State concerned.

admissible in evidence²⁴ and that is so even taking account of the object and purpose of the Vienna Convention on diplomatic relations, namely the efficient performance of the mission, which cannot be damaged by the admission into evidence of documents which have already been disclosed by a third party, a disclosure for which the requesting party seeking admission bears no responsibility.²⁵ It thus held that the admission into evidence of the cable in question did not violate the archives and documents of the US mission since it had already been disclosed to the entire world by a third party.²⁶

23. The Defence thus respectfully calls on the Chamber to conclude that the cable of 6 July 2007 is now in the public domain and that there is nothing to prevent it from being admitted insofar as it meets the requirements of relevance and probative value which are applicable to any item of evidence. In so doing, the Chamber will be doing no more than following the current trend of judicial reasoning, which favours admitting the WikiLeaks cables into evidence.

III. Considerations on the admissibility of the diplomatic cables published by WikiLeaks and, in particular, the admission of the disputed cable

A. Emergence of a trend of judicial reasoning in favour of admitting the diplomatic cables published by WikiLeaks

24. The Defence wishes to draw the attention of the Chamber to a number of significant precedents. Firstly, the Trial Chamber of the Special Court for Sierra Leone, in the *Taylor* case, treated the WikiLeaks diplomatic cables like any other official documents, applying the admissibility criteria on a case-by-case basis. The Chamber thus agreed, by decision of 27 January 2011, that such cables could be tendered on the ground that the criteria regarding the applicable rule for admission had been satisfied.²⁷ In a decision of 21 December 2011, it also dismissed a motion from the Defence for other diplomatic cables revealed by WikiLeaks to be admitted into the case file, *not because of their nature*, but because the Defence's request was

24. *Bancoult*, Court of Appeal, para. 58.

25. *Ibid.*, para. 64.

26. *Ibid.*, para. 65.

27. SCSL, *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-1-T, Decision on the Urgent and Public with Annexes A-C Defence Motion to Re-Open its Case in Order to Seek Admission of Documents Relating to the Relationship Between the United States Government and the Prosecution of Charles Taylor, 27 January 2011, p. 6.

overdue, that the documents were duplicates of others already admitted into the case file and that the evidentiary material was essentially evidence of opinion.²⁸ This approach, which examines evidence on a case-by-case basis, is one advocated by the Defence.

25. Secondly, in the *Gotovina* case, the Appeals Chamber of the ICTY, seized of a motion for the admission of additional evidence on appeal including, *inter alia*, diplomatic cables disclosed by WikiLeaks after the trial,²⁹ held in a decision of 2 October 2012 that all the documents bore sufficient indicia of credibility, including dates, names of recipients, signatures and seals and that they were therefore *prima facie* credible for the purposes of being admitted as additional evidence on appeal.³⁰ The Prosecution however had specifically challenged the credibility and the source of those cables.³¹ As it stands, since it originates from an Appeals Chamber of an international criminal tribunal, it is the most significant precedent concerning the issue of the admissibility of diplomatic cables published by WikiLeaks.

26. Lastly, the Defence notes that a number of decisions rendered by the international criminal tribunals in proceedings relating to the administration of justice, although they have no direct bearing on the issue of the admissibility of the WikiLeaks cables as evidence in criminal cases, are however worthy of interest. Indeed, those examples demonstrate that the issue of whether or not those cables should be admitted does not generally appear to be challenged by the opposing party, as is also the case with the veracity of their content, and nor are they raised by the judges examining them. Notably, in instances where staff members of the international criminal tribunals were presented as having had contact with the US Embassy in order to provide them with information relating to the ongoing proceedings, the individuals concerned refrained from denying those allegations substantiated by diplomatic

28. SCSL, *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-1-T, Trial Chamber II, Decision on Public with Annexes A-B Defence Motion to Re-Open its Case in Order to Seek Admission of Two Documents, 21 December 2011.

29. ICTY, *The Prosecutor v. Ante Gotovina and Mladen Markač*, IT-06-90-A, Public Redacted Version of the 21 June 2012 Decision on Ante Gotovina's and Mladen Markač's Motions for the Admission of Additional Evidence on Appeal, 2 October 2012 (in English only), para. 19.

30. *Ibid.*, para. 26.

31. ICTY, *The Prosecutor v. Ante Gotovina and Mladen Markač*, IT-06-90-A, Notice of Filing of Redacted Public Version of Prosecution Response to Gotovina's Rule 115 Motion, 15 December 2011 (in English only), para. 44.

cables.³² Taken as a whole, in the Defence's view, those examples demonstrate the emergence of a tendency to no longer exclude from the outset WikiLeaks cables from international criminal proceedings.

B. Arguments in favour of the admissibility of the disputed cable

27. In accordance with the aforementioned proposed approach, the Defence will endeavour to demonstrate *in concreto* that the cable whose admission it is seeking has met the conditions of relevance and probative value required under Rule 149 (C) of the Rules.

1. Relevance of the disputed cable

28. The Defence submits that the cable it seeks to have admitted into evidence is relevant in that it relates to matters that were covered in the testimony of Fouad Siniora and that the Defence would find useful in order to test the credibility of this witness. For the Defence, the former Prime Minister is in a position to comment on the transcript of a meeting involving a member of his Government in his official capacity who expresses his point of view on several occasions. The Defence notes that the Prosecution moreover did not challenge the relevance of the content of this document or the Defence's line of questioning since it was not opposed

32. For example, in the *Karadžić* case before the Mechanism for International Criminal Tribunals (MICT), the accused filed a request for interference in the administration of justice based on a WikiLeaks diplomatic cable. The Prosecution did not challenge either the admissibility of this document or the facts to which it referred, although they were considered as established by the Single Judge. See MICT, *The Prosecutor v. Slobodan Milošević & The Prosecutor v. Radovan Karadžić*, MICT-13-55-R90.1 & MICT-13-58-R90.1, Decision on Karadžić Requests to Appoint an *Amicus Curiae* Prosecutor to Investigate Contempt Allegations against Former ICTY Prosecutor Carla Del Ponte, 27 November 2013. At the Special Court for Sierra Leone (SCSL), in the *Taylor* case, in a decision of 28 January 2011, the Trial Chamber examined the diplomatic cables leaked by WikiLeaks on which a Defence request for disclosure or investigation of United States Government sources within the Tribunal was based. The Prosecution did not challenge the use of the cables or their content, merely submitting that they did not in any way support the allegations that the Defence intended to draw from them. The Chamber examined the cables and dismissed the request on grounds that bore no relation to their admissibility or probative value. See SCSL, *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-1-T, Decision on Urgent and Public with Annexes A-N Defence Motion for Disclosure and/or Investigation of United States Government Sources Within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables, 28 January 2011. In the *Milošević* case, a chamber which had been specifically designated also examined a cable published by WikiLeaks when it was seised of a request to initiate contempt proceedings and drew factual considerations from it. See ICTY, *The Prosecutor v. Slobodan Milošević*, IT-02-54-Misc.5 & IT-02-54-Misc.6, Decision on the Initiation of Contempt Investigations, 18 July 2011 (in English only).

to the Defence putting those questions on condition that it did not specifically refer to the document.³³ The Defence will not therefore elaborate further on this point.

2. Probative value of the disputed cable

29. The cable that the Defence is seeking to have admitted into evidence contains definite indicia of reliability. It is dated, referenced, the name of the author is identified, as are those of the recipients, and it follows the format of US Embassy cables. It consists of a transcript of a meeting between the US Ambassador and the Lebanese Minister of Justice. The minutes of a meeting are intended to provide a strictly faithful and accurate report of the comments made during that meeting. The report of an ambassador to his superiors at the State Department cannot be made an exception to that rule, quite the contrary. It is not a note giving the ambassador's opinion on Lebanese political life or providing dubious information gathered from anonymous sources by US agencies, the probative value of which would be seriously limited unless it were used to prove the existence of such information. Furthermore, the content of that transcript is highly contextualised, it refers to specific and proven facts and does not contain any inconsistencies, which renders it entirely plausible. The Defence notes moreover that Fouad Siniora carefully refrained from challenging the reality of that meeting.³⁴ The Defence submits therefore that the probative value of that transcript is more than sufficient to satisfy the criteria for the admissibility of evidence in these proceedings. It will be for the Chamber to determine subsequently the weight to be given to its content, in accordance with the approach traditionally adopted by the Chamber in this respect to any other document.³⁵

IV. Conclusion

30. In summary, the Defence submits that the database of the US diplomatic cables provided by WikiLeaks is an invaluable and, in fact, undreamt-of source of documentation which any individual interested in seeking the truth in terms of international relations, be it a journalist, a historian or a judge, cannot disregard. The Defence notes that the Chamber

33. TS (FR), p. 87, line 24, to p. 88, line 2 (the Defence notes that the French translation is erroneous and therefore refers to the English transcription, p. 85, lines 1-5, where it is clear that the Prosecution had no objection to the line of questioning); see also p. 89, lines 19-21.

34. TS (FR), p. 85, line 15 to p. 87, line 1 and p. 92, lines 9-12.

35. See for example, STL, *The Prosecutor v. Ayyash et al.*, STL-11-01, Transcript of the hearing of 17 November 2014, p. 15, lines 17-18, or, transcript of the hearing of 13 March 2015, p. 8, lines 4-6.

agreed to hear evidence concerning the political context within which the attack against Rafic Hariri took place. It appears that the United States played a major role in that political context which led to the establishment of the Tribunal and that consequently their diplomatic archives are highly instructive regarding that context. The Defence is of the opinion that it would be absurd, and indeed hypocritical, to deprive itself of those archives for the sake of principles which in reality only protect the political interests of the United States and whereas experience has shown that those cables are, clearly, deemed to be authentic.

31. In light of the complexity and significance of the issue raised in this request,³⁶ which as the Presiding Judge has pointed out, “has wider complications than just this courtroom,”³⁷ the Defence respectfully requests that the Chamber hold a hearing.

FOR THESE REASONS

32. The Defence respectfully requests that the Trial Chamber grant its request and admit into evidence the cable of 6 July 2007 that the Defence intended to use during the cross-examination of Fouad Siniora.

Without prejudice

17 April 2015,

[signature]

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Word count: 5,327 [French original]

36. TS (FR), p. 91, lines 1-5.

37. TS (FR), p. 106, lines 8-9.

