



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

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

Registrar: Mr Daryl Mundis

Date: 26 April 2017

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION ADMITTING 12 DOCUMENTS AND
A WITNESS' STATEMENTS RELATED TO HEZBOLLAH, ITS OFFICIALS
AND TELEPHONE NUMBERS**

Office of the Prosecutor:

Mr Norman Farrell & Mr Alexander Milne

Counsel for Mr Salim Jamil Ayyash:

Mr Emile Aoun, Mr Thomas Hannis & Mr Chad Mair

**Legal Representatives of
Participating Victims:**Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra**Counsel for Mr Hassan Habib Merhi:**Mr Mohamed Aouini, Ms Dorothée Le Fraper
du Hellen & Mr Jad Khalil**Counsel for Mr Hussein Hassan Oneissi:**Mr Vincent Courcelle-Labrousse, Mr Yasser
Hassan & Ms Natalie von Wistinghausen**Counsel for Mr Assad Hassan Sabra:**

Mr David Young & Mr Geoffrey Roberts



INTRODUCTION

1. The amended consolidated indictment pleads that five interconnected mobile telephone groups—operating in four closed networks which are colour-coded as ‘red’, ‘green’, ‘blue’ and ‘yellow’—were involved in planning, preparing and executing the attack in Beirut on 14 February 2005 that targeted the former Prime Minister of Lebanon, Mr Rafik Hariri, resulting in his death and that of many others. The ‘purple phones’, a group of three mobiles, were allegedly used to coordinate a false claim of responsibility for the attack, made soon after the explosion.¹ The attribution of mobiles to the four Accused and the former Accused Mr Mustafa Amine Badreddine,² is a key part of the Prosecution’s case.³ The Prosecution relies on evidence identifying users of telephone numbers which were in contact with one or more telephone numbers attributed to the Accused and Mr Badreddine. These are referred to as “third party contacts”.

2. The Prosecution also pleads that all four Accused, as was Mr Badreddine, are supporters of Hezbollah.⁴

3. Hezbollah, the (Party of God), is a Shiite Muslim political party and military organisation in Lebanon, headed, since 1992, by its Secretary General, Mr Hassan Nasrallah.⁵

4. The Prosecution requests the admission into evidence of 12 documents, under Rule 154 of the Special Tribunal’s Rules of Procedure and Evidence, to demonstrate the nature of the

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2720, Amended Consolidated Indictment, 12 July 2016 (‘Amended consolidated indictment’), paras 3 (c), 14-15.

² STL-11-01/T/AC/AR126.11, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F0019-AR126.11, Decision on Badreddine Defence Interlocutory Appeal of the “Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of the Proceedings”, 11 July 2016; F2633, Order Terminating Proceedings Against Mustafa Amine Badreddine Without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016. Mr Badreddine is named in the amended consolidated indictment as a co-conspirator; see paras 3 and 48-51.

³ Amended consolidated indictment, paras 14-19. In particular paras 14 (b) and (c) provide that attribution is evidence that supports the assertion that a SIM card (telephone number) was used by a specific person (the phone user) during a particular time period. Attribution evidence may include, but is not limited to: subscriber information, witness statements, other forms of documentary evidence and analysis of call data records, including co-location analysis of multiple phones of a single user specifically.

⁴ Amended consolidated indictment, para. 49.

⁵ In parliament, it forms part of the Loyalty to the Resistance Bloc. It is part of the governing alliance, and won 12 out of 128 seats in the 2009 parliamentary elections. Hezbollah’s military wing is also referred to as the ‘national resistance group’ or the ‘Islamic Resistance’ with a goal to defend Lebanon from Israel. See S/1998/53, Report of the Secretary-General on the United Nations Interim Force in Lebanon, 20 January 1998, para. 2; S/2004/777, Report of Secretary-General pursuant to Security Council resolution 1559 (2004), 1 October 2004, para. 19; S/2005/272, First semi-annual report of the Secretary-General to the Security Council on the implementation of resolution 1559 (2004), 26 April 2005, para. 53.

relationship of the Accused and Mr Badreddine with Hezbollah, and to identify third party contacts with mobiles allegedly used by the Accused and Mr Badreddine.

5. As a prerequisite of their admission, the Prosecution requests leave to add four of these documents to its Rule 91 exhibit list. The Prosecution also seeks the admission of one witness statement, under Rule 155, which provides information about a senior Hezbollah official and identifies his telephone number.⁶ Counsel for the Accused, Mr Salim Jamil Ayyash, Mr Hassan Habib Merhi, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra responded to the motion.⁷ The Prosecution, at the Trial Chamber's request, filed a supplementary submission.⁸

6. The Trial Chamber has previously acknowledged the general principles and rules of international criminal law relating to the admission and exclusion of evidence, and the procedural safeguards for the admission of material tendered 'from the bar table', under Rule 154, and those governing the amendment of a party's exhibit list.⁹ These are applicable here. The Trial Chamber in receiving evidence has followed the inclusionary approach of the

⁶ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2975, Prosecution Motion to Admit 12 Documentary Exhibits and One Witness Statement related to Hezbollah, its Officials and Telephone Numbers, pursuant to Rules 154 and 155, 3 February 2017 (confidential with confidential annexes A-F), ('Prosecution motion').

⁷ F3004, Ayyash Defence Response to Prosecution Motion to Admit Documentary Exhibits and One Witness Statement related to Hezbollah, 20 February 2017 (confidential), ('Ayyash Defence response'); F3000, Merhi Defence Response to the "Prosecution Motion to Admit 12 Documentary Exhibits and One Witness Statement related to Hezbollah, its Officials and Telephone Numbers, pursuant to Rules 154 and 155", 20 February 2017 (confidential with confidential annex), ('Merhi Defence response'); F3003, Corrected Version of the Response to the "Prosecution Motion to Admit 12 Documentary Exhibits and One Witness Statement related to Hezbollah, its Officials and Telephone Numbers pursuant to Rules 154 and 155", 21 February 2017 (confidential), ('Oneissi Defence response'); F2999, Response to "Prosecution Motion to Admit 12 Documentary Exhibits and One Witness Statement related to Hezbollah, its Officials and Telephone Numbers pursuant to Rules 154 and 155", 20 February 2017 (confidential) ('Sabra Defence response').

⁸ Order to the Prosecution to File an Addendum to the "Prosecution Motion to Admit 12 Documentary Exhibits and One Witness Statement Related to Hezbollah, its Officials and Telephone Numbers, pursuant to Rules 154 and 155". See transcript of 6 April 2017, pp 3-4; F2975, Addendum to Prosecution Motion to Admit 12 Documentary Exhibits and One Witness Statement related to Hezbollah, its Officials and Telephone Numbers, pursuant to Rules 154 and 155, 7 April 2017 (confidential), ('Prosecution motion addendum').

⁹ Rule 154: 'Subject to Rules 155, 156 and 158, the Trial Chamber may admit evidence in the form of a document or other record, consistently with Rule 149 (C) and (D). Rule 149 (C) provides that a Chamber may admit any relevant which it deems to have probative value. Rule 149 (D) provides that a Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. In particular, the Chamber may exclude evidence gathered in violation of the rights of the suspect or the accused as set out in the Statute and the Rules. See F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 33; F1350, Decision on Prosecution's Motion to Admit into Evidence Photographs, Questionnaires and Records of Victims, 28 January 2014, paras 5-7. See also F2798, Decision on the Admission of Call Sequence Tables related to the Movements of Mr Rafik Hariri and Related Events, and Four Witness Statements, 31 October 2016, para. 68.

Special Tribunal's Rules.¹⁰ The Trial Chamber has also applied the principles applicable to admitting witness statements into evidence under Rule 155 without requiring a witness to attend court for cross-examination.¹¹ These too are applicable here.

DOCUMENTARY EVIDENCE

7. The Prosecution requests the admission of 12 documents falling into the following five categories:

- a) public statements of the Secretary General of Hezbollah, Mr Hassan Nasrallah;
- b) articles relating to the deaths of the brothers of the Accused, Mr Merhi, Mr Sabra and Mr Oneissi;
- c) Mr Marwan Hamade's (the current Lebanese Minister for Education) agenda book and Mr Nabih Sahyouni's (a former Lebanese general) phonebook;
- d) a screenshot from the *Arab Decision* online portal; and
- e) a letter from Judge Said Mirza.¹²

Prosecution motion

8. The Prosecution seeks leave to add four of the documents to its exhibit list. The Prosecution submits that it has good cause for adding the four exhibits at this stage of the proceedings, as they are already disclosed to the Defence, are not voluminous and their addition will not cause undue delay to the proceedings or prejudice to the Defence.¹³

9. As a general submission, the Prosecution submits that the probative value of the documents is not outweighed by the Accused's right to a fair trial. The Defence is on notice of their relevance because Mr Andrew Donaldson (Witness PRH230), a Prosecution analyst,

¹⁰ Decision on the scope of Mr Marwan Hamade's evidence, transcript of 14 November 2014, p. 50; transcript of 17 November 2014, pp 2-15, in particular pp 9, 11; F2815, Decision on the Admission of Documents Related to Telephone Subscriber and User Information, 4 November 2016, paras 65-66.

¹¹ Rule 155 (A): 'Subject to Rule 158, the Trial Chamber may admit in lieu of oral testimony the evidence of a witness in the form of a written statement, or a transcript of evidence which was given by a witness in proceedings before the Tribunal, which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.' F0937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013, para. 13; F2644, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH024, PRH069, PRH106 and PRH051 pursuant to Rule 155, 12 July 2016, para. 25.

¹² Prosecution motion, para. 2.

¹³ Prosecution motion, paras 5, 19-21; annex E, items 1-4. The exhibit additions were disclosed to the Defence on 29 September 2016. Relevant parts of two exhibits were disclosed on 25 March 2013.

relies on some of them in his “attribution reports”.¹⁴ The Defence may cross-examine him on his reliance of these exhibits and the attribution of telephone numbers in general. Admitting these documents serves the interests of justice and of a fair and expeditious trial.¹⁵

a) Public statements of the Secretary General of Hezbollah, Mr Hassan Nasrallah

10. This category includes a transcript of a press conference held by Mr Nasrallah on 9 August 2010, where he confirmed that a group within the ‘resistance security’ was linked to a group surveilling Mr Hariri’s movements. He also confirmed that he had provided this information to the late Mr Wissam Al-Hassan, who was in charge of Mr Hariri’s security before his assassination, and became the head of the information branch of the Lebanese Internal Security Forces in early 2006. The Prosecution argues that the transcript is relevant as it corroborates Mr Al-Hassan’s statement, which the Prosecution intends to tender under Rule 158 as that of an ‘unavailable witness’, because he is deceased.¹⁶

11. Regarding reliability, the Prosecution submits that it received the exhibit in response to a request for assistance. The accompanying cover letter records that Mr Wafiq Safa, ‘the head of the central unit for liaison and coordination in Hezbollah’, handed over six DVDs on 17 August 2010 to Judge Said Mirza, the Public Prosecutor at the Lebanese Court of Cassation. One DVD is described in the cover letter as ‘Speech of Hezbollah Secretary General Sayyed Hassan Nasrallah, in a press conference in Beirut – Lebanon – 9/8/2010’.¹⁷

12. Additionally, two of Mr Nasrallah’s speeches fall in this category. The first was delivered on 11 November 2010 in a commemoration for Hezbollah martyrs. Mr Nasrallah stated in relation to the Special Tribunal:

“Mistaken is he who believes that we will allow the arrest or detention of any of our mujahedeen. The hand that attempts to reach them will be cut off.”

13. Mr Nasrallah delivered the second speech during Iftar, at the Women’s Branch of the Islamic Resistance Support Association, on 17 August 2011. He referred to the indictment

¹⁴ Annex A, items 4-5, 9-11, are cited in ‘Evidence of Telephone Attribution, Mustafa Amine Badreddine’, version 3, dated 18 November 2015, and in ‘Evidence of Telephone Attribution, Hassan Habib Merhi’, version 4, dated 13 November 2015.

¹⁵ Prosecution motion, para. 14.

¹⁶ Rule 158 permits a Chamber to admit into evidence the statement of a witness ‘who has died, who can no longer with reasonable diligence be traced, or who is for good reason otherwise unavailable to testify orally’, if it finds that the statement is reliable. The Chamber must also consider whether the statement goes to the acts and conduct of the accused as charged in the indictment.

¹⁷ Prosecution motion, para. 8 (a); annex A, item 1; annex D, item 1.

against the then four Accused, Mr Ayyash, Mr Baddredine, Mr Oneissi, and Mr Sabra, describing them as ‘honourable resistance men’.

14. The Prosecution argues that these exhibits are relevant to demonstrating Mr Nasrallah’s attitude to the Special Tribunal, the Accused and Mr Badreddine. The first demonstrates that Mr Nasrallah ‘encouraged non-cooperation with the Special Tribunal for Lebanon, and indicated that he would encourage a violent retribution against anyone who did assist the STL’, while the second demonstrates the association between Hezbollah and the then four Accused. A Prosecution analyst, Mr Leroy Stockton (Witness PRH512), in a witness statement of 19 January 2017, verified that two Prosecution analysts had downloaded these speeches from the websites of *Al Ahed* news and *Al Manar* TV, respectively. The Prosecution also seeks to add Mr Nasrallah’s speech of 11 November 2010 to its exhibit list.¹⁸

Defence responses

Counsel for Mr Ayyash

15. Counsel for Mr Ayyash oppose the request regarding the exhibit additions generally, because the Prosecution has not demonstrated good cause to wait for three years into the trial to amend its exhibit list. They add, regarding Mr Nasrallah’s speech of 11 November 2010, that the Prosecution failed to establish the relevance of Mr Nasrallah’s attitude towards the Special Tribunal to any facts pleaded in the amended consolidated indictment.¹⁹

Counsel for Mr Merhi

16. As a general submission, counsel for Mr Merhi object to the Prosecution’s practice to rely on untendered documents as the basis for admitting other documents. They oppose the admission of the public statements and the addition of the speech of 11 November 2010 to the exhibit list. Counsel argue that Mr Nasrallah’s public statements are political statements which have little weight or probative value. If the Prosecution finds otherwise, it should call Mr Nasrallah to testify to allow the Defence to explore the context of his remarks in cross-examination. Not only does the transcript of Mr Nasrallah’s press conference of 9 August 2010 not corroborate Mr Al-Hassan’s statement, this statement has not yet been

¹⁸ Prosecution motion, paras 8 (b), 19; annex A, items 2-3; annex D, item 2; annex E, item, 1.

¹⁹ Ayyash Defence response, paras 2-5.

admitted into evidence. The Defence will robustly oppose its admission and the Prosecution cannot presume that it will be admitted.

17. Further, Mr Nasrallah's 11 November 2010 speech has no relevance to any material facts of the case. Notwithstanding its disclosure to the Defence, its late addition to the Prosecution's exhibit list at this advanced stage of the proceedings runs counter to the purpose of Rule 91. Mr Nasrallah's Iftar speech does not prove the Accused's attitude towards Hezbollah. At the time of the speech, Mr Merhi was yet not indicted; therefore, this speech does not concern him.²⁰

Decision

18. The Trial Chamber has carefully reviewed these documents, and every other document in the annexes to the Prosecution motion, and the submissions. Regarding the Merhi Defence's general concerns that the Prosecution relies on untendered materials to support its motion for the admission of the documents, the Trial Chamber has previously held, in determining the admission of evidence, that it may examine supporting documents that are not (yet) in evidence.²¹

19. In relation to the Merhi Defence's objection regarding the Prosecution's supporting arguments on the relevance of the first exhibit, Mr Nasrallah's press statement, the Prosecution has foreshadowed but not yet requested the admission of Mr Al-Hassan's statement. Therefore, whether this document corroborates the witness statement is yet to be decided.

20. The Prosecution has explained, regarding the evidence it wishes to lead in relation to the pleaded material fact that the Accused, as was Mr Badreddine, are supporters of Hezbollah, that this document is part of the Prosecution's evidence demonstrating that the 'green network', the command network allegedly responsible for co-ordinating and monitoring the preparations and the execution of the 14 February 2005 attack on Mr Hariri and the false claim of responsibility, was allegedly a Hezbollah network. This, in turn, is relevant to demonstrate that Mr Ayyash, Mr Badreddine and Mr Merhi were supporters of Hezbollah, as

²⁰ Merhi Defence response, paras 1-2, 4-7, 11-23, 37.

²¹ F2899, Decision on the Prosecution Motion for the Admission of Records Received from the Traffic, Truck, and Vehicle Management Authority, 9 December 2016, para. 26.

pleaded in the amended consolidated indictment.²² The Trial Chamber considers that these arguments make Mr Nasrallah's public statements relevant to the Prosecution's case.

21. The Prosecution also explained that Mr Nasrallah's speeches of 11 November 2010 and 17 August 2011 convey his attitude towards the Special Tribunal, and to Mr Ayyash, Mr Oneissi, Mr Sabra and Mr Badreddine.²³ The Trial Chamber finds that these speeches are therefore relevant to support a possible inference that Mr Ayyash, Mr Oneissi and Mr Sabra, as was Mr Badreddine, are Hezbollah supporters. Their probative value is a matter of weight.

22. In relation to their *prima facie* reliability, the Prosecution obtained the audio-visual recording of the press conference from the Lebanese Prosecutor General in response to a request for assistance. The cover letter records that Mr Safa handed it over to the Office of the Public Prosecutor at the Lebanese Court of Cassation. The Trial Chamber has carefully examined the reliability of the public speeches. Mr Stockton sufficiently authenticated these documents taken from 'open sources', which provides them the necessary indicia of reliability. Mr Nasrallah's testimony is not required to authenticate the documents. How much weight may be given to these exhibits is subject of decision at a later stage of the proceedings.

23. The Prosecution has provided sparse reasoning for the delay in producing Mr Nasrallah's speech of 11 November 2010, only on 22 September 2016. However, against this is that Mr Nasrallah's speech was notorious and must be well-known to all participants in the trial. On balance, the Trial Chamber considers that adding this document to the Prosecution's exhibit list is in the interests of justice, despite the advanced stage of the proceedings.

24. As decided above, the Trial Chamber considers that this document is relevant and *prima facie* reliable and hence has some probative value. Defence counsel have had at least four months *formal* notice of its content. Granting the request will cause no undue delay in the trial proceedings.

²² F2948, Updated Prosecution Summary Statement of Evidence in relation to paragraph 49 of the Amended Consolidated Indictment, 20 January 2017 (confidential annex A), ('Updated Prosecution summary statement') paras 3, 5-6.

²³ Updated Prosecution summary statement, para. 7.

Prosecution motion

b) Articles relating to the deaths of the brothers of the Accused, Mr Merhi, Mr Sabra and Mr Oneissi

25. The first set of documents in this category contains four online articles from March 2004. Two are from the *Al-Mustaqbal* news portal, the other two from the websites of *Al-Inbaa* News and the National News Agency. They report the death and funeral procession of Mr Merhi's younger brother, Mr Youssef Habib Merhi, on 10 March 2004. The procession started at Mr Merhi's parents' house, in Haret Hreik, Beirut, and ended for internment in Rawadat El-Shahidayn, El-Ghobeiry. Hezbollah members of the Lebanese Parliament, Mr Ali Ammar, Mr Mohammed Berjawi and Mr Mohammed Raad, and other Hezbollah officials, attended the procession. The articles report that Mr Nasrallah attended a ceremony held in memory of the late Mr Youssef Habib Merhi on 14 March 2004 in the hall of "Chahed Secondary School – Airport Road".

26. The second set is photographs of three articles from *Al-Intiqad* Journal, volumes 1048 and 1049, published on 12 and 19 March 2004, reporting the same events. An article titled 'Hezbollah bid farewell the Mujahid Martyr Merhi' states that Mr Youssef Habib Merhi died as a martyr on 10 March 2004. Another article invites its readers to attend a ceremony commemorating one week of his martyrdom. The third article reports on Mr Nasrallah's speech at this ceremony.

27. The Prosecution submits that these articles are relevant to demonstrate the relationship between Mr Merhi's brother and Hezbollah, and Mr Nasrallah's public support to the Merhi family. Both 'Purple 231' and personal mobile telephone ending in 091 (PMP 091) activated cell towers near the Merhi family house in Haret Hreik around the time of the procession and was inactive at the time of the funeral. This assists the analysis of the geographic profile and the attribution of 'Purple 231' to Mr Merhi and PMP 091 to him and his family. Considering these exhibits together with the telephone numbers entered in Mr Marwan Hamade's agenda book for Mr Ammar described below, and a subscriber note for a mobile number ending in 725 subscribed for Mr Ammar,²⁴ supports an inference that Mr Merhi is a Hezbollah supporter.

²⁴ Exhibit P1450, a subscriber note from the Lebanese telecommunications provider MTC Touch.

28. Regarding reliability, the Prosecution relies on an analytical note of its former analyst, Mr Anders Nielson, who located and downloaded the online articles on 26 June 2011. Concerning the articles from *Al-Intiqad* Journal, a former Prosecution investigator (Witness PRH612) explains in his investigator's note that he visited the German Orient Institute Library in Beirut and took photographs of these articles.²⁵

29. One online article titled 'Hezbollah responds to verbal attacks by Samir Geagea', dated 9 September 2007, reports about a statement that Mr Mahmoud Qomati, a member of the Political Council of Hezbollah, made during a memorial ceremony for Mr Sabra's younger brother, the 'Mujahid Moussa Hassan Sabra',²⁶ at El Qa'im Complex. The article states that the representative of the Secretary General of Hezbollah, Mr Sheikh Ali Jaber, and deputies, Mr Amine Cherri, Mr Ammar and former deputy, Mr Mohammed El-Birjawi also attended the ceremony.

30. According to the Prosecution, this document is relevant to demonstrate the relationship between Hezbollah and Mr Sabra's younger brother, as well as Hezbollah's support to the Sabra family. Taken together with Mr Nasrallah's speech delivered during Iftar on 17 August 2011, where he addressed Mr Sabra as one of the 'honourable resistance men', it supports the inference that Mr Sabra is a Hezbollah supporter. A Prosecution analyst, Mr Adrian Kirwan (Witness PRH431), explains in an investigator's note that he accessed and downloaded the article from the *Shiaweb* website. The Prosecution also seeks leave to add this document to its exhibit list.²⁷

31. Another online article from *Shiaweb* reports on the events of the 27th day of the war in Lebanon, 7 August 2006, and announces the death of two militants, Mr Ahmad Oneissi, known as 'Habib', and his son, Mr Ali Ahmad Oneissi, known as 'Karar', calling them martyrs. The article provides their years and places of birth, and states that they joined the general mobilisation ranks of Hezbollah, undertook numerous military trainings and participated in various jihadist missions.

²⁵ Prosecution motion, paras 9 (a)-(b); annex A, items 4-5; annex D, items 3-4.

²⁶ See, exhibit P1078, a family personal status extract of Sabra family members, obtained from the Lebanese Ministry of the Interior and Municipalities.

²⁷ Prosecution motion, paras 9 (c), 19; annex A, item 6; annex D, item 5; annex E, item 2.

32. Two screenshots from the website of *Atharshohada* show photographs of Mr *Ahmed* Hassan Oneissi and Mr Ali *Ahmed* Oneissi. Graphics on the top of the pages show a man carrying a Hezbollah flag.

33. The Prosecution submits that the Accused, Mr Oneissi, had a brother named *Ahmad* with similar personal data as to that reported in the online article, who died on 22 July 2006,²⁸ and submits that Ali is possibly Mr Oneissi's nephew. The *Shiaweb* article and the screenshots are relevant to demonstrate that Mr Oneissi's relatives had been active members of Hezbollah. Considered in conjunction with Mr Nasrallah's addressing Mr Oneissi as one of the 'honourable resistance men', these exhibits support an inference that Mr Oneissi is also a supporter of Hezbollah. A former Prosecution investigator, Witness 612, and a former analyst, Mr Clarence Lai (Witness PRH434) each verify in a note their open source searches and downloading these exhibits. The Prosecution also seeks to amend its exhibit list to add the *Shiaweb* article and the screenshots to it.²⁹

Defence responses

34. Counsel for Mr Ayyash object to the Prosecution's request because it has not demonstrated good cause to amend its exhibit list.³⁰

35. Counsel for Mr Merhi submit that the Prosecution makes circuitous inferences from the online and printed media articles related to the funeral and commemorating ceremonies of Mr Merhi's younger brother. The probative value of these documents is outweighed by their prejudicial effect as it is inequitable that it obliges counsel for Mr Merhi to defend the acts and conduct of Mr Merhi's late brother. The Prosecution's interest in relying on these exhibits for geographical profiling and the attribution of 'Purple 231' and PMP 091 cannot take precedence over the Accused's fair trial rights. The documents are open source materials, which reduce their reliability and militates against their admission 'from the bar table'.³¹

36. Counsel for Mr Oneissi oppose the admission of the open source articles related to the deaths and funerals of the family members of Mr Merhi, Mr Oneissi and Mr Sabra because their reliability has not been established. The Prosecution analysts and investigators failed to describe the methodology they used to find and select these articles. There is no information

²⁸ See exhibit P1066, Lebanese family civil status register extract related to the Oneissi family.

²⁹ Prosecution motion, paras 9 (d)-(e), 19; annex A, items 7-8; annex D, items 6-7, annex E, items 3-4.

³⁰ Ayyash Defence response, paras 2-3.

³¹ Merhi Defence response, paras 25-27.

about the quality of these sources; the information they usually publish ‘is likely to be tainted politically or in any other way’. A skilled website developer with an interest to do so could create such information. Counsel submit that there is nothing to support the identity or the deaths of the alleged family members of Mr Oneissi. Moreover, the Prosecution relies on uncorroborated and unreliable information to assert that because two of Mr Oneissi’s family members are allegedly members of Hezbollah then Mr Oneissi is involved in criminal or terrorist activities. Counsel make no submission as to the sought addition of the documents to the exhibit list.³²

37. Counsel for Mr Sabra do not object to the Prosecution motion, but point out that this should not be interpreted as an acceptance of, or a waiver to challenge, the alleged association of Mr Sabra with Hezbollah, or as relieving the Trial Chamber of its duty to assess the evidence pursuant to Rule 149 (C). Counsel have reservations regarding the authentication and probative value of the exhibits and the inferences the Prosecution draws from them. For example, based on a single article, the Prosecution assumes that Mr Sabra is associated with Hezbollah. The Prosecution makes these assumptions in the absence of any corroborating testimony. It also intends not to call Witnesses PRH079 and PRH540, who are relatives of Mr Sabra and could comment on Mr Sabra’s alleged Hezbollah affiliations, and further seeks the admission of Witness PRH024’s statement under Rule 158. Mr Donaldson’s evidence does not fill this gap because he has no direct evidence regarding Mr Sabra’s political allegiance, or the political affiliations of his family.³³

Decision

38. The Trial Chamber is satisfied that the information in the articles—online and printed—related to the death, funeral and commemoration of Mr Merhi’s younger brother, is relevant for two reasons. First, these exhibits assist the geographical profiling and the attribution of ‘Purple 231’ and PMP 091 respectively to Mr Merhi and his family. Second, when considered with the call sequence tables for these numbers and the subscriber note for Mr Ammar’s telephone number 725 these documents are also relevant to and probative of the material fact pleaded in the amended consolidated indictment that Mr Merhi is a supporter of Hezbollah.³⁴

³² Oneissi Defence response, paras 2-4.

³³ Sabra Defence response, paras 2-8.

³⁴ The call sequence tables for ‘Purple 231’ and PMP 091, and the subscriber note extract for Mr Ammar’s number 725 have been admitted as exhibits P527, P1264 and P1450, respectively.

39. The article regarding the memorial for Mr Sabra's younger brother, Mr Moussa Hassan Sabra, reports that senior Hezbollah officials were present. The article is relevant to demonstrate Hezbollah's recognition of him as a Hezbollah member and hence its attitude to his family. Notwithstanding the Prosecution's intention to withdraw Witnesses 079 and 540, the exhibit is cumulative with other evidence. Taken together with Mr Nasrallah's Iftar speech of 17 August 2011 and the statements of Witnesses PRH106 and PRH069,³⁵ it is relevant to the Prosecution's case that Mr Sabra is a Hezbollah supporter.

40. The Trial Chamber has considered the online article and photographs published in relation to the death of Mr Ahmad or *Ahmed* Hassan Oneissi and Mr Ali Ahmad or *Ahmed* Oneissi together, and in light of the family civil status register of the Oneissi family.³⁶ According to the records, the Accused, Mr Oneissi, had a brother named 'Ahmad', born in the late 1950s, as opposed to the date of birth stated in the article. Notwithstanding the variations of the name Ahmad/Ahmed, the Trial Chamber is satisfied that the article and the photographs are relevant to demonstrate the Oneissi family's link to Hezbollah. Taken together with Mr Nasrallah's qualification of the then four Accused, including Mr Oneissi, as 'honourable resistance men', these documents are also relevant to show the Accused's affiliation with Hezbollah, which includes the familial association. The Trial Chamber does not suggest that the mere fact that one family member is a Hezbollah member or supporter leads to the inference that other members automatically fall into the same category. However, the cumulation of evidence—here of Hezbollah support for family members of the Accused, combined with Mr Nasrallah's remarks of support for the four original Accused—could potentially support an inference that the relevant Accused is a Hezbollah supporter. Additionally, in the case of Mr Badreddine, the evidence presented by the Prosecution in the *voir dire* hearing in May 2016 on his reported death, that he was a prominent Hezbollah military commander, may also corroborate this pleading with regard to him.³⁷ The Prosecution has stated that it intends to tender some of these exhibits in this case.³⁸

³⁵ In their statements taken in October 2010, Witnesses PRH106 and PRH069 stated that Mr Sabra had been connected to or supported Hezbollah. These statements were admitted as exhibits P1149 and P1150 with associated material of the latter as P1150.1.

³⁶ Exhibit P1066.

³⁷ See transcript of 31 May 2016, pp 3-56. The Trial Chamber marked the exhibits with the initials 'MB' so they are clearly delineated from those in the main proceedings. These are exhibits P834-865 MB, including P836.1 MB, P836.2 MB, P841.1 MB, P842.1 MB, P843.1 MB, P844.1 MB, P845.1 MB, P846.1 MB, P850.1 MB, P851.1 MB, P854.1 MB, P856.1 MB, P858.1 MB, P862.1 MB.

³⁸ Updated Prosecution summary statement, para. 9.

41. The Trial Chamber has carefully examined the reliability of these documents. In their respective notes, Mr Kirwan, Mr Lai, Mr Nielson and Witness 612 sufficiently recorded the aim and results of their research and the source of these materials, and verified their content. The Trial Chamber considers that this is sufficient to establish their *prima facie* reliability.

42. Nothing before the Trial Chamber suggests that these articles were fabricated by a ‘skilled website developer’, as counsel for Mr Oneissi argue. The quality of the information contained in the articles and whether they are tainted politically or in any other way, goes to their weight. The Trial Chamber is therefore satisfied that these documents are *prima facie* reliable and hence have some probative value for their admission into evidence.

43. The Trial Chamber does not find that the probative value of these documents is substantially outweighed by any prejudicial effect. What further inferences may be drawn from these exhibits in light of the totality of evidence are matters for the Trial Chamber to decide at a later stage.

44. The Trial Chamber also finds that adding to the exhibit list the online articles downloaded from *Shiaweb* reporting, respectively, the death of Mr Sabra’s brother and Mr Oneissi’s relatives, and the two screenshots of photographs of Mr Oneissi’s relatives, is in the interests of justice, despite the advanced stage of the trial proceedings. These are relevant and probative, and the Defence had notice of their content and significance. Granting the Prosecution’s request will not cause undue delay in the trial proceedings.

Prosecution motion

c) *Mr Marwan Hamade’s agenda book and Mr Nabih Sahyouni’s phonebook*

45. The first exhibit in this category is a copy of 14 sequential pages from a handwritten agenda book of Mr Marwan Hamade (Witness PRH038), currently the Lebanese Minister for Education. An entry for Tuesday, 17 August 2004, includes the name ‘Ali Ammar MP’ and two telephone numbers underneath ending in 725 and 450, with ‘house’ written next to the latter.

46. The Prosecution attributes PMP 354 and sequential mobile phone (SMP) 944 to Mr Badreddine in the amended consolidated indictment.³⁹ A subscriber note shows that the mobile 725 was subscribed to Mr Ammar.⁴⁰ This number was in contact with PMP 354 and SMP 944 during the time the Prosecution attributes these numbers to Mr Badreddine. The same number was also in contact with 'Purple 231' and PMP 091 when the Prosecution attributes these numbers to Mr Merhi and his family respectively. The number 450 was in contact once, on 28 November 2002, with PMP 354 that the Prosecution attributes at the material time to Mr Badreddine.

47. The second exhibit is a copy of a handwritten telephone notebook of Mr Nabih Sahyouni (Witness PRH518), a former brigadier-general of the Lebanese Army, which records mobile number 725 for Mr Ammar, and numbers 505 and 834 for Mr Safa.⁴¹

48. Short text messages (SMS) to 505 between 18 February 2004 and 31 December 2009 show that the recipient is addressed as 'Haj Wafiq', 'Wafiq' or 'Mr Safa', and occasionally relate to matters concerning Hezbollah.⁴² Mobile number 505 was in contact with PMP 354 and SMP 944 attributed to Mr Badreddine at the material time. It was also in contact with PMPs 935 and 170 and 'Yellow 669' that the Prosecution attributes to Mr Ayyash at the relevant time.

49. The agenda book and the phonebook assist in analysing third party contacts of the mobiles attributed to Mr Ayyash, Mr Badreddine and Mr Merhi. The Prosecution further argues that Mr Ammar attended the funeral of Mr Merhi's younger brother, and was present, as was Mr Safa, at Mr Badreddine's funeral,⁴³ which shows that their acquaintance with Mr Merhi, Mr Badreddine and their families.

50. Regarding the provenance of these exhibits, investigators of the United Nations International Independent Investigation Commission (UNIIC), Ms Amal Alamuddin⁴⁴ and

³⁹ Amended consolidated indictment, para. 18. Sequential mobile phones were used in sequential order. Each phone was used for a period of weeks or months and then replaced by another. *See* amended consolidated indictment, para. 16.

⁴⁰ Exhibit P1450.

⁴¹ Telephone number 834 appears next to Mr Safa's name with a note 'cancelled' in the phonebooks of the former head of Lebanon's General Security Directorate, Mr Jamil El-Sayyed. Mobile number 505 also appears somewhat illegibly in the same exhibit. *See* exhibit P1393.

⁴² *See* exhibit P1329.

⁴³ Exhibits P842 MB and P846 MB are of video footage broadcast on *Al-Manar* television on 13 May 2016 of a condolence ceremony for Mr Badreddine attended by his relatives, Hezbollah members and religious identities.

⁴⁴ Now Ms Amal Clooney.

Ms Raelene Sharp, explain in their respective investigator's notes that Mr Hamade and Mr Sahyouni provided these documents during their interviews.⁴⁵

Defence responses

51. Counsel for Mr Merhi challenge the reliability and probative value of these documents, because they were not authenticated by the witnesses in the courtroom. Cross-examining Mr Donaldson, who relies on these documents in his reports, will not substitute for the testimony of these witnesses in providing authenticity and probative value to their respective written notes. Therefore, it is premature to admit these documents into evidence.⁴⁶

52. Counsel for Mr Oneissi do not oppose the admission of these documents. Besides giving a general reminder to the Trial Chamber of its responsibilities to satisfy itself of the *prima facie* relevance and probative value of the documents under Rule 149 (C) and (D), counsel for Mr Sabra do not object to the admission of the documents. Counsel for Mr Ayyash submit that any reference to the exhibits related to Mr Badreddine's funeral should be disregarded, as these exhibits—marked in the *voir dire* as 'MB' after the initials of the former accused—have not been tendered in the 'main case'.⁴⁷

Decision

53. The Trial Chamber is satisfied—and the Defence does not contest—that these documents are relevant to identify third party contacts with Hezbollah officials and the attribution of mobile numbers to Mr Ayyash, Mr Merhi and Mr Badreddine at the relevant time. The Trial Chamber has already admitted a subscriber note identifying Mr Ammar's telephone number, as well as Mr Jamil El-Sayed's handwritten phonebook recording Mr Safa's mobile number 505, and call sequence tables for the same number.⁴⁸ Therefore, these exhibits are cumulative in nature. The Trial Chamber notes the existence of evidence related to Mr Badreddine's death tendered during the hearing in May 2016, but does not rely on them to establish the *prima facie* probative value of these documents. Call sequence tables of SMP 944 and PMP 354, both attributed to Mr Badreddine, admitted as exhibits P1287 and P1311; call sequence tables for PMP 935, PMP 170 and 'Yellow 669', attributed to Mr Ayyash, admitted as exhibits P1261, P1262 and P1248; and call sequence tables for

⁴⁵ Prosecution motion, paras 10 (a)-(b); annex A, items 9-10; annex D, items 8-9.

⁴⁶ Merhi Defence response, paras 29-33.

⁴⁷ Ayyash Defence response, para. 6.

⁴⁸ These are exhibits P1450, P1393, P1329, P1353.

‘Purple 231’ attributed to Mr Merhi and PMP 091 attributed to him and his family, admitted as exhibits P527 and P1264, show telephone contacts as submitted by the Prosecution.

54. Mr Hamade provided copies of an extract from his agenda book and other documents during his interview with UNHCR investigators on 13 March 2008. It appears from the transcript that during his interview he referred to this document and discussed with the investigators ways to provide a copy of it. Ms Alamuddin’s investigator’s note of 19 March 2008 confirms the receipt of the document.

55. Counsel for Mr Merhi do not argue that it is not authentic, and nothing before the Trial Chamber leads it to doubt its authenticity. The Trial Chamber is therefore satisfied that it bears the necessary indicia of reliability for its admission into evidence under Rule 154, and there is no need for a witness to attest to its authenticity.

56. Mr Sahyouni, in his witness statement of 11 May 2015, confirmed that the document is a copy of his work phonebook, and described giving the original to an UNHCR investigator during an interview in 2007. The investigator copied it and gave the original back to Mr Sahyouni. Ms Sharp’s investigator’s note of 7 December 2007 confirms this. Therefore, contrary to Defence counsel’s submission, Mr Sahyouni indeed authenticated the document. The Trial Chamber therefore finds that this document is *prima facie* reliable, and there is thus no need for the witness to testify to its authenticity.

Prosecution motion

d) A screenshot from the Arab Decision online portal

57. This exhibit is taken from the *Arab Decision* website. It provides contact details for Mr Ammar, including numbers 725 and 450, and describes him as a member of the Lebanese Parliament and Hezbollah.

58. For the same reasons above at paragraph 53, this exhibit assists in analysing the third party contacts of the mobiles attributed to Mr Badreddine and Mr Merhi. In combination with other evidence, it may be relevant to support the inference that both were Hezbollah supporters.⁴⁹

⁴⁹ Exhibit P842 MB regarding Mr Badreddine; Mr Marwan Hamade’s agenda book and Mr Nabih Sahyouni’s phonebook regarding Mr Badreddine and Mr Merhi.

59. A Prosecution analyst, Mr Stockton, explains in a statement that the document was downloaded from the *Arab Decision* website in 2011. When he checked, in January 2017, the web address was no longer active; however the same information was then available at a different web address.⁵⁰

Defence responses

60. Counsel for Mr Merhi challenge the relevance and the reliability of this document. They reiterate that the affiliation of Mr Merhi's younger brother should not be used against Mr Merhi himself. The document is 'open source' material, which considerably diminishes its reliability to admit it as evidence.⁵¹ Counsel for Mr Ayyash express concern regarding the Prosecution's reference to exhibits related to Mr Badreddine's funeral.⁵²

Decision

61. The Trial Chamber finds the document relevant to and probative of the attribution of mobile numbers to Mr Merhi and Mr Badreddine and identifying their contacts with Hezbollah officials. The exhibit is cumulative to the subscriber note of Mr Ammar's number.⁵³ In his statement of 19 January 2017, Mr Stockton sufficiently verified the websites from where the document was retrieved and its content available, which provides the document the necessary indicia of reliability. Moreover, the mere fact that a document is derived from an 'open source' (i.e. is publicly available) does not of itself render such a document less reliable or authentic. In some instances, the open source nature of a document could make it more authentic than, say, a document attached to a witness statement.

Prosecution motion

e) A letter from Judge Said Mirza

62. This document is a letter accompanying a response to a request for assistance from the Office of the Public Prosecutor at the Court of Cassation in Lebanon, dated 17 August 2010, and signed by Judge Mirza. It refers to Mr Safa as the head of the 'central unit for liaison and co-ordination' in Hezbollah. This document is relevant because it describes Mr Safa's role

⁵⁰ Prosecution motion, para. 11; annex A, item 11; annex D, item 2.

⁵¹ Merhi Defence response, paras 35-36.

⁵² Ayyash Defence response, para. 6.

⁵³ Exhibit P1450.

within Hezbollah, and assists the analysis of third party contacts of the numbers attributed to Mr Ayyash and Mr Badreddine.

63. Taken together with other evidence, it also allows the inference that both had access to senior Hezbollah officials, and hence were Hezbollah supporters.⁵⁴ The document is also reliable because Judge Mirza signed and stamped it.⁵⁵

Defence responses

64. Defence counsel do not challenge the admission of this document. Counsel for Mr Ayyash object to the reference to an exhibit related to Mr Badreddine's funeral.⁵⁶

Decision

65. The Trial Chamber finds that the letter is relevant to assist the Prosecution's allegations that Mr Safa, a Hezbollah official, was in contact with Mr Ayyash and Mr Badreddine at the material time. The letter was sent from the Lebanese Ministry of Justice, Public Prosecution Department at the Court of Cassation. It bears a reference number, the date, Judge Mirza's signature and the official seal of the Department. This provides sufficient evidence of the authenticity of the document. It is also probative, because it may support the inference that the Accused, as was Mr Badreddine, are Hezbollah supporters, as pleaded in the amended consolidated indictment.

WITNESS STATEMENT

Prosecution motion

66. The Prosecution also seeks the admission Witness PRH040's statement of 19 December 2014, and ten paragraphs from his statement of 12 September 2011.⁵⁷

67. The witness worked for a Lebanese minister between 2000 and 2005. From a call sequence table of calls from a limited period he recognised the number that he used in 2005.

⁵⁴ The Prosecution refers to exhibit P834 MB which includes Hezbollah statements from the website of *Al-Manar* TV announcing 'the martyrdom of the jihadist leader', Mr Badreddine; and exhibit P1673 which is a selection of documents related to Mr Ayyash's applications for the 1424 and 1425 (2004 and 2005) Hajj pilgrimage, provided by a witness, Mr Ibrahim Itani.

⁵⁵ Prosecution motion, para. 12; annex A, item 12.

⁵⁶ Ayyash Defence response, para. 6.

⁵⁷ Prosecution motion, para. 3; Prosecution motion addendum, para. 2; annex B.

By reviewing the minister's agenda book, the witness confirmed that the minister had meetings scheduled with Mr Safa and Mr Nasrallah on specified dates in 2005.

68. The witness states that 'H.N.' in the agenda stands for Mr Nasrallah's initials. He recognised the calling number 505 as Mr Safa's number. He stated that Mr Safa was in charge of liaison and coordination with the security apparatus in Lebanon. The witness was in contact with Mr Safa's number '585' in order to organise a meeting between the minister and Mr Nasrallah on a specified date in '2011'.⁵⁸

69. The Prosecution relies on these paragraphs of Witness 040's statement because the witness described Mr Safa's occupation and recognised his number 505. The evidence assists in analysing the contacts of mobiles PMP 354 and SMP 944 that the Prosecution attributes to Mr Badreddine, and that of PMPs 935 and 170 and 'Yellow 669' attributed to Mr Ayyash. It also corroborates Mr Sahyouni's phonebook and Judge Mirza's letter. The evidence is cumulative to evidence already admitted.⁵⁹

70. On 19 December 2014, the Prosecution retook the witness' initial statement in order to comply with the requirements of Rule 155 (B) and the Practice Direction.⁶⁰ The witness reviewed his previous statement, corrected two points related to his personal data and his private telephone number, and adopted it. In annex B of the Prosecution motion, the Prosecution explains that paragraph 129 of the statement of 12 September 2011 contains typographical errors. Correctly, Mr Safa's telephone number ends in 505 and the meeting took place in 2005.

71. The statements do not go to the proof of the acts and conduct of the Accused as charged in the amended consolidated indictment. The witness is on the Prosecution's witness list, and

⁵⁸ Witness PRH040's statement of 12 September 2011, paras 7-8, 29, 57, 61, 69-70, 72-73, 129.

⁵⁹ These are Mr El-Sayyed's phonebooks, admitted as exhibit P1393, and Witness PRH045's statement, admitted as exhibit P1107. Witness 045 states that Mr Safa was Hezbollah's public figure responsible for security and military matters.

⁶⁰ Rule 155 (B) provides that as a general rule, the statement must have been signed by the person who records and conducts the questioning and by the person who is questioned and his counsel, if present, as well as, where applicable, the Prosecutor or the judge who is present. The record shall note the date, time and place of, and all persons present during, the questioning. If, in exceptional circumstances, the person has not signed the record, reasons shall be noted. Practice Direction on the Procedure for Taking Depositions under Rules 123 and 157 and for Taking Witness Statements for Admission in Court under Rule 155, STL-PD-2010-02, dated 15 January 2010, sets further and more detailed requirements.

the Defence received adequate notice of his evidence. According to the Prosecution, there is no overriding public interest for the evidence to be presented orally.⁶¹

Defence responses

72. Counsel for Mr Ayyash, Mr Oneissi and Mr Sabra take no position regarding the witness statements.

73. Counsel for Mr Merhi oppose the admission of the statements. According to counsel the first statement contains only few paragraphs, namely 61, 69 and 129, which are potentially cumulative to evidence already admitted, and the vast part of the first statement is unrelated to the case. Counsel note the inaccuracy regarding the last three digits of Mr Safa's telephone number and submit that it questions the accuracy of the entire statement. Its admission is therefore prejudicial to the Defence and the possibility of cross-examining Mr Donaldson, who relies on Mr Safa's mobile number in the attribution reports, does not remedy this prejudice.⁶²

Decision

74. The Trial Chamber agreed with the Merhi Defence that a significant part of Witness 040's statement of 12 September 2011 is not relevant to the Prosecution's case, and ordered the Prosecution to identify with precision which paragraphs of this statement is relied upon.⁶³ The Prosecution, in an addendum, specified ten paragraphs.⁶⁴

75. The Prosecution alleges that Mr Ayyash and Mr Badreddine had access to Hezbollah and its high ranking official, Mr Safa, and pleads that the Accused and Mr Badreddine were Hezbollah supporters. The Trial Chamber is satisfied that the witness' first statement is relevant to this pleaded material fact as it provides evidence of Mr Safa's role in Hezbollah, and his number which may be used for third party contact analysis of the telephone numbers attributed to the Accused and Mr Badreddine.

76. The statement is annexed to another statement that complies with the formal requirements of the Rules and the Practice Direction. The Trial Chamber disagrees with

⁶¹ Prosecution motion, paras 15-18; Prosecution motion addendum; annex B; annex C, items 1-2.

⁶² Merhi Defence response motion, paras 39-40, 42, 44.

⁶³ Order to the Prosecution to File an Addendum to the "Prosecution Motion to Admit 12 Documentary Exhibits and One Witness Statement Related to Hezbollah, its Officials and Telephone Numbers, pursuant to Rules 154 and 155". See transcript of 6 April 2017, pp 3-4.

⁶⁴ Prosecution motion addendum, para. 2

counsel's submission that one erroneous digit in Mr Safa's telephone number makes the entire witness statement of 12 September 2011 inaccurate. The Trial Chamber has admitted call sequence tables for Mr Safa's telephone number 505.⁶⁵ In paragraph 129 of the statement six digits appear in identical order in the number as in the call sequence tables. In paragraphs 61 and 69, the witness recalled Mr Safa's telephone number correctly. The Trial Chamber is therefore satisfied that the incorrect digit does not of itself make the statement unreliable.

77. The statement is cumulative to evidence identifying the same telephone number and the position Mr Safa holds in Hezbollah.⁶⁶ It does not relate to the acts and conduct of any of the Accused. Witness 040's statements are admissible under Rule 149 (C) and there is no reason to exclude them under Rule 149 (D). The Trial Chamber considers that the statements may be admitted under Rule 155 without requiring the witness to attend court for cross-examination. From the statement of 12 September 2011 only paragraphs 7-8, 29, 57, 61, 69-70, 72-73 and 129 will be received into evidence.

CONFIDENTIALITY

78. The Prosecution requests the Trial Chamber to maintain the confidential status of the annexes to its motion as they contain confidential information regarding the identity of third parties. The Prosecution and counsel for Mr Merhi intend to file public redacted versions of their respective filings. Counsel for Mr Ayyash request that their response is made public. Counsel for Mr Oneissi and Mr Sabra filed their responses confidentially.

79. While in these proceedings confidentiality is the exception, not the rule, the Trial Chamber is satisfied that annexes A-D and F to the Prosecution motion should remain confidential, until it decides otherwise, and the Prosecution should file public redacted versions. The Trial Chamber sees no reason to maintain the confidentiality of annex E, as it does not contain information regarding third parties.

DISPOSITION

FOR THESE REASONS, the Trial Chamber,

DECLARES that the documents listed in annex A of the Prosecution motion, and referred to at paragraph 7 above, are admissible under Rule 154;

⁶⁵ Exhibits P1329, P1353.

⁶⁶ In particular, the letter from Judge Mirza, and Mr El-Syyed's phonebooks, admitted as exhibit P1393.

DECLARES admissible, under Rule 155, Witness PRH040's statement of 19 December 2014, and paragraphs 7-8, 29, 57, 61, 69-70, 72-73, 129 of his statement of 12 September 2011;

DECIDES that it will, at a suitable stage in the proceedings, formally admit the documents and the witness statements into evidence, and assign them exhibit numbers;

ORDERS the Prosecution and counsel for Mr Merhi, Mr Oneissi and Mr Sabra to file public redacted versions of their filings;

INSTRUCTS the Registry to reclassify annex E of the Prosecution motion, and counsel for Mr Ayyash's response to the Prosecution motion (filing F3004) from confidential to public; and

MAINTAINS the confidentiality of annexes A-D and F of the Prosecution motion until further order and orders the Prosecution to file public redacted versions of these annexes.

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

Leidschendam,
The Netherlands
26 April 2017

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

