



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE PRE-TRIAL JUDGE**

Case No.: **STL-11-01/PT/PTJ**

The Pre-Trial Judge: **Mr Daniel Fransen**

The Registrar: **Mr Herman von Hebel**

Date: **12 April 2013**

Original: **French**

Classification: **Public**

**THE PROSECUTOR**

v.

**SALIM JAMIL AYYASH,  
MUSTAFA AMINE BADREDDINE,  
HUSSEIN HASSAN ONEISSI &  
ASSAD HASSAN SABRA**

**DECISION RELATING TO THE PROSECUTION REQUESTS OF 8 NOVEMBER 2012 AND  
6 FEBRUARY 2013 FOR THE FILING OF AN AMENDED INDICTMENT**

**Office of the Prosecutor:**  
Mr Norman Farrell

**Counsel for Mr Salim Jamil Ayyash:**  
Mr Eugene O'Sullivan

**Legal Representative of Victims:**  
Mr Peter Haynes

**Counsel for Mr Mustafa Amine Badreddine:**  
Mr Antoine Korkmaz

**Counsel for Mr Hussein Hassan Oneissi:**  
Mr Vincent Courcelle-Labrousse

**Counsel for Mr Assad Hassan Sabra:**  
Mr David Young



## **I. Subject of the Decision**

1. By way of the present Decision, the Pre-Trial Judge rules on the Prosecution request of 8 November 2012 seeking leave to file an amended indictment (respectively, the “Request of 8 November 2012” and the “Indictment of 8 November 2012”), in accordance with the Decision of the Pre-Trial Judge of 25 October 2012 (the “Decision of 25 October 2012”) and the issuing of arrest warrants including transfer and detention orders for the accused referred to therein.<sup>1</sup> The Pre-Trial Judge also rules on the Prosecution request of 6 February 2013 for leave to include further amendments to the Indictment of 8 November 2012, to which is joined a new amended indictment (respectively, the “Request of 6 February 2013” and the “Indictment of 6 February 2013”).<sup>2</sup>

## **II. Background to the proceedings**

2. On 28 June 2011, the Pre-Trial Judge confirmed the counts contained in the Indictment of 10 June 2011 and allowed Messrs. Ayyash, Badreddine, Oneissi and Sabra to be charged (respectively, the “Decision of 28 June 2011”, the “Indictment of 10 June 2011” and the “Accused”).<sup>3</sup>

3. On 17 August 2012, the Prosecution seized the Pre-Trial Judge with a request for leave to file an amended indictment (the “Request of 17 August 2012”).<sup>4</sup> The Prosecution included with that Request an amended indictment (the “Indictment of 17 August 2012”).

4. On 4 October 2012, the Pre-Trial Judge issued the Prosecution with an order for clarification of certain proposed amendments in the Request (the “Order of 4 October 2012”).<sup>5</sup>

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<sup>1</sup> STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Filing of the Amended Indictment in Compliance with the Decision of 25 October 2012 & Request for Amended Arrest Warrants and Orders/Requests for Transfer and Detention, confidential, 8 November 2012.

<sup>2</sup> STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution Request for Leave to Include Further Amendments to its Proposed Amended Indictment, 6 February 2013.

<sup>3</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/I/PTJ, Decision Relating to the Examination of the Indictment of 10 June 2011 issued against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi & Mr Assad Hassan Sabra, confidential, 28 June 2011. A public redacted version dated the same day was filed on 16 August 2011. This Decision confirms the counts included in the Indictment of 10 June 2011 with the exception of the attempt to cause the death of 231 other persons, which does not fall within the constituent elements of the terrorist act but within those of attempted intentional homicide.

<sup>4</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution Request for Leave to Amend the Indictment Pursuant to Rule 71(A)(ii), confidential, 17 August 2012, with a public redacted version dated 18 September 2012.

5. On 15 October 2012, the Prosecution responded by submitting a clarification brief (the “Clarification Brief”).<sup>6</sup>

6. On 25 October 2012, the Pre-Trial Judge ruled on the Request of 17 August 2012.<sup>7</sup> He granted that request, subject to a number of amendments, and invited the Prosecution to file a new indictment incorporating them.<sup>8</sup>

7. Pursuant to the Decision of 25 October 2012, the Prosecution filed the Indictment of 8 November 2012.<sup>9</sup> The Prosecution, moreover, added two further amendments in addition to those allowed by that Decision. It also requested the Pre-Trial Judge to issue arrest warrants including transfer and detention requests against the Accused.<sup>10</sup> Lastly, the Prosecution sought leave to redact some information considered confidential from the Indictment of 8 November 2012 and from annexes A and B included therewith.<sup>11</sup>

8. On 13 November 2012, Counsel for the Defence of Messrs. Ayyash, Badreddine, Oneissi and Sabra (the “Counsel for the Defence”) were invited to respond to the Request of 8 November 2012,<sup>12</sup> which they did not do.

9. On 19 December 2012, the Prosecution requested the Pre-Trial Judge to stay his Decision relating to the Indictment of 8 November 2012 in order for him to review it once again, and, if necessary, to add to or amend it.<sup>13</sup>

10. On 6 February 2013, the Prosecution sought leave to amend the Indictment of 8 November 2012 and filed the Indictment of 6 February 2013 including all the proposed amendments.<sup>14</sup>

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<sup>5</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Order for Clarification of Certain Proposed Amendments in the Prosecution's Request for Leave To Amend the Indictment of 17 August 2012, 4 October 2012.

<sup>6</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution Submissions Pursuant to the “Order for Clarification of Certain Proposed Amendments in the Prosecutor’s Request for Leave to Amend the Indictment of 17 August 2012”, confidential, 15 October 2012.

<sup>7</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-01/PT/PTJ, Decision on the Prosecution Request of 17 August 2012 for Leave to File an Amended Indictment, 25 October 2012.

<sup>8</sup> *Id.*, Disposition.

<sup>9</sup> Request of 8 November 2012, paras 4 and 7 to 8.

<sup>10</sup> *Id.*, paras 9 and 10.

<sup>11</sup> *Id.*, para. 3.

<sup>12</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-01/PT/PTJ, Scheduling Directive from the Pre-Trial Judge, confidential, 13 November 2012.

<sup>13</sup> Transcript, p. 33-34 [French version] (30 January 2013).

11. On 12 February 2013, Counsel for the Defence were invited to respond to the Request of 6 February 2013.<sup>15</sup>

12. On 19 and 20 February 2013, Counsel for the Defence of Messrs. Sabra<sup>16</sup> and Oneissi<sup>17</sup> responded to the Request of 6 February 2013 (respectively, the “Sabra Response” and the “Oneissi Response”).

13. On 6 March 2013, the Pre-Trial Judge granted the Prosecution leave to file a reply to the response from the Counsel for the Defence. He also directed the Prosecution to produce the additional evidence in support of the amendments requested on 6 February 2013 and invited Counsel for the Defence to respond to the Prosecution reply (the “Order of 6 March 2013”).<sup>18</sup> Furthermore, the Pre-Trial Judge requested the Prosecution to provide him with explanations regarding the allegations contained in paragraphs 3 b) and 17 c) of the Indictment of 8 November 2012<sup>19</sup> regarding the relationship between Mr Ayyash and the user of the “purple 231” telephone in connection with the false claims of responsibility.

14. On 14 March 2013, the Prosecution filed a reply (the “Prosecution Reply”)<sup>20</sup> to which Counsel for the Defence did not respond.

### III. Statement of reasons

15. After having ruled on his jurisdiction (A) and recalled the applicable law (B), the Pre-Trial Judge shall review in succession the Request of 8 November 2012 (C) and the Request of 6

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<sup>14</sup> Request of 6 February 2013, Annex A.

<sup>15</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-01/PT/PTJ, Scheduling Directive from the Pre-Trial Judge, confidential, 12 February 2013.

<sup>16</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Sabra Response to Prosecution Motion to Amend the Amended Indictment, 19 February 2013.

<sup>17</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, *Réponse de la Défense à la “Prosecution Request for Leave to Include Further Amendments to its Proposed Amended Indictment”*, confidential, 20 February 2013.

<sup>18</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Order granting the Prosecution Request for Leave to Reply to Defence Responses to the Prosecution's Further Amendments to the Proposed Amended Indictment, confidential, 6 March 2013.

<sup>19</sup> Paragraphs 3 b) and 17 c) of the Indictment of 8 November 2012 are identical to those of the Indictment of 6 February 2013.

<sup>20</sup> STL, *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01/PT/PTJ, Prosecution Reply to “Sabra Response to Prosecution Motion to Amend the Amended Indictment”, confidential, 14 March 2013.

February 2013 (D). He shall rule lastly on the issuing of arrest warrants including transfer and detention orders (E) and on the requirements of confidentiality (F).

#### **A. Jurisdiction**

16. Rule 71 (A) (ii) of the Rules of Procedure and Evidence (the “Rules”) provides that between the moment when an indictment has been confirmed and when the case is assigned to the Trial Chamber, the Prosecution may only amend the indictment if authorised by the Pre-Trial Judge. Insofar as the original indictment was confirmed on 28 June 2011 and that the Trial Chamber has not yet been seized of the case in accordance with Rule 95 of the Rules, the Pre-Trial Judge has jurisdiction to rule on the Request of 8 November 2012 and on the Request of 6 February 2013.

#### **B. Applicable Law**

17. Rule 71 (B) of the Rules provides that an indictment may only be amended if there is “prima facie evidence to support the proposed amendment” and if “[...] the amendment would not result in improper prejudice to the accused”. As he recalled in the Decision of 25 October 2012, the Pre-Trial Judge must, first and above all else, take into account the effect of an amendment on the rights of the accused, in particular to properly prepare his defence or to be tried without delay.<sup>21</sup> To do so, when an amendment is a substantive one, he must ensure that it is based on prima facie evidence. If an amendment relates only to clarification, the Pre-Trial Judge must ensure that it does indeed strengthen the preciseness of the indictment and, thus, explain the content of the case and allow the accused to better comprehend it.<sup>22</sup> The accused shall then be able to prepare and, as necessary, adapt their defence in terms of the clarification received.<sup>23</sup> With that in mind, the Pre-Trial Judge has pointed out that two elements should be considered: on the one hand, the delays in the proceedings which might result from an amendment of the indictment and, on the other hand, the benefit that the accused and the judges might derive from it.<sup>24</sup>

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<sup>21</sup> Decision of 25 October 2012, para. 21.

<sup>22</sup> *Id.*, para. 22.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

### C. The Request of 8 November 2012

18. The Pre-Trial Judge first recalls that the amendments proposed in the Indictment of 8 November 2012 were recapitulated in the Indictment of 6 February 2013. He notes, moreover, that they reflect, in part, those allowed by the Decision of 25 October 2012 relating to the Indictment of 17 August 2012.

19. However, the Pre-Trial Judge notes that in the Indictment of 8 November 2012, the Prosecution wished to provide two new “clarifications”. On the one hand, it intended to add to the last line of paragraph 14 (a) of the Indictment of 8 November 2012 the words that were underlined in paragraph 7 of the Request of 8 November 2012.<sup>25</sup> On the other hand, it requested that, in accordance with the evidentiary analysis it has carried out, the number of telephone communications referred to in paragraph 20 (b) of the Indictment of 8 November 2012 be reduced from 213 to 212.<sup>26</sup>

20. The Pre-Trial Judge observes that these clarifications are amendments to the Indictment of 17 August 2012 which were not allowed by the Decision of 25 October 2012. They therefore should have, in principle, been the subject of a request for amendment filed in accordance with Rule 71 (A) (ii) of the Rules and, in any case, they must meet the criteria provided for in Rule 71 (B) of the Rules.<sup>27</sup> In particular, the amendments must not be prejudicial to the rights of the Accused to properly prepare their defence and to be tried without undue delay.

21. The Pre-Trial Judge considers that paragraph 14 (a) of the Indictment of 8 November 2012 mentioned above might provide clarification to strengthen the preciseness of that Indictment. It is, consequently, in the interests of the Accused. The second amendment indicated above contained in paragraph 20 (b) of the Indictment of 8 November 2012 rectifies a clerical error and has no influence on the rights of the Accused. As a consequence, those two amendments are accepted. The Request of 8 November 2012 is based on that point.

22. However, insofar as the Indictment of 8 November 2012 was the subject of a request for amendment on 6 February 2013, which must be ruled upon, the Pre-Trial Judge considers that the Indictment of 8 November 2012 must be dismissed.

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<sup>25</sup> Request of 8 November 2012, para. 7.

<sup>26</sup> *Id*, para. 8.

<sup>27</sup> Decision of 25 October 2012, paras 19-21.

## D. The Request of 6 February 2013

### 1. The arguments of the Parties

23. In the Request of 6 February 2013, the Prosecution sought leave to classify the amendments in two categories in order to clarify a number of allegations included in the Indictment of 8 November 2012.

24. The first category of amendments is aimed at removing the words 'and/or' from paragraphs 15 (c), 20 (a) and 38 of the Indictment of 8 November 2012 and to replace them with the words that have been highlighted in paragraphs 12, 15 and 17 of the Request of 6 February 2013.<sup>28</sup> Moreover, in order to ensure consistency between paragraphs 15 (c) and 15 (d), the Prosecution proposes amending paragraph 15 (d) as indicated by the highlighting in paragraph 13 of the Request of 6 February 2013.<sup>29</sup> The Prosecution states that those amendments are not prejudicial to the rights of the Accused, that they strengthen the preciseness of the Indictment of 8 November 2012 and are based on evidence which was already submitted in the context of the process for confirmation of the Indictment of 10 June 2011.<sup>30</sup>

25. The second category of amendments concerns the period during which the conspiracy to commit a terrorist act – namely the assassination of Mr Hariri – actually took place.<sup>31</sup> Thus, according to the Prosecution, Messrs. Badreddine and Ayyash agreed to commit the attack against Mr Hariri at some time during the period between 11 November 2004 – the date of the first surveillance of Mr Hariri's movements – and 14 February 2005 – the date the attack was carried out against him.<sup>32</sup> With regard to Messrs. Oneissi and Sabra, the Prosecution states that they joined the conspiracy at a time between 22 December 2004 – the date they first visited the Arab University Mosque of Beirut in search of a suitable individual to make the false claims of responsibility for the attack – and 14 February 2005.<sup>33</sup> With that in mind, the Prosecution proposes to amend paragraphs 42, 42 (a), 42 (c) and 48 of the Indictment of 8 November 2012 as indicated in paragraphs 26, 27, 28 and 29 of the Request of 6 February 2013, respectively.<sup>34</sup> As a

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<sup>28</sup> Request of 6 February 2013, paras 9-17.

<sup>29</sup> *Id.*, para. 13.

<sup>30</sup> *Id.*, para. 11.

<sup>31</sup> *Id.*, paras 18-32.

<sup>32</sup> *Id.*, para. 20.

<sup>33</sup> *Id.*, para. 21.

<sup>34</sup> *Id.*, paras 26-30.

consequence, it also suggests amending Counts 6 to 9 of the Indictment of 8 November 2012 and, in particular, paragraphs 58, 60, 62 and 64 as mentioned in paragraph 32 of the Request of 6 February 2013.<sup>35</sup> The Prosecution adds, in that regard, that, being secret by nature, the existence of a conspiracy does not have to be formally established but may be inferred from the totality of the evidence of the case at hand.<sup>36</sup> Moreover, the fact that the Prosecution extends the period during which the conspiracy occurred is not likely to cause prejudice to the Defence which must, in any case, prepare itself to meet the facts alleged in the Indictment of 8 November 2012.<sup>37</sup>

26. The Oneissi Defence opposes the Request of 6 February 2013 for the following reasons. The Prosecution omitted to precisely identify the facts and the evidence on which it relies to propose further amendments.<sup>38</sup> Moreover, to allow the requested amendments would prejudice the rights of the Accused in that it would prevent them from properly preparing their defence – the date for the start of trial being provisionally set for 25 March 2013 – and would considerably extend the scope of the allegations brought against the Accused.<sup>39</sup>

27. The Sabra Defence also requested the Pre-Trial Judge to dismiss the Request of 6 February 2013 on the basis notably that: i) by seeking amendments to the Indictment of 8 November 2012, the Prosecution recognises *de facto* that it is not in a position to prove the charges alleged therein;<sup>40</sup> ii) the Prosecution is unable to establish precisely when Mr Sabra became implicated in the conspiracy;<sup>41</sup> iii) the proposed amendments constitute new allegations which extend the period of the conspiracy in which Mr Sabra allegedly participated and do not rely on specific acts which might be imputed to him;<sup>42</sup> iv) in that context, Counsel for the Defence for Mr Sabra is not in a position to properly prepare his defence;<sup>43</sup> and v) the Prosecution should precisely identify the evidence on which it relies to submit these new allegations.<sup>44</sup>

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<sup>35</sup> *Id.*, paras 31-32.

<sup>36</sup> *Id.*, paras 23-24.

<sup>37</sup> *Id.*, para. 24.

<sup>38</sup> Oneissi Response, paras 16-19.

<sup>39</sup> *Id.*, paras 20-32.

<sup>40</sup> Sabra Response, para. 21.

<sup>41</sup> *Id.*, paras 27-29.

<sup>42</sup> *Id.*, paras 27 and 35.

<sup>43</sup> *Id.*, paras 15 and 22.

<sup>44</sup> *Ibid.*



28. In its Reply, the Prosecution submits the following main arguments in support of the Request of 6 February 2013: i) Defence Counsel have not demonstrated that they would suffer a prejudice if the amendments proposed in the Request of 6 February 2013 were to be allowed;<sup>45</sup> ii) Defence Counsel have already challenged defects of form before the Trial Chamber that relate to paragraphs 38 and 42 (c) of the Indictment of 10 June 2011 with regard to which the Pre-Trial Judge declared himself to be without jurisdiction;<sup>46</sup> iii) by contesting, on the basis of pure speculation, the amendments to the Indictment of 10 June 2011 that relate to the date of the conspiracy, Defence Counsel are in reality seeking to obtain the annulment of Count 1, which has already been confirmed by the Pre-Trial Judge;<sup>47</sup> iv) the proposed amendments to paragraphs 15 (c) and (d) as well as 20 (a) do not relate to substantive matters: they are merely aimed at providing clarification or additional information regarding the paragraphs concerned;<sup>48</sup> v) the amendments to paragraph 38 do not constitute new factual allegations: they are based on information contained in other paragraphs of the Indictment of 8 November 2012;<sup>49</sup> vi) the date changes contained in Count 1 are based on allegations included in the Indictment of 10 June 2011 confirmed by the Pre-Trial Judge<sup>50</sup> and on the evidence provided in support of them;<sup>51</sup> and v) the date changes contained in Counts 6 to 9 are based on allegations included in the Indictment of 10 June 2011 confirmed by the Pre-Trial Judge and on the evidence filed in support of them.<sup>52</sup>

29. Furthermore, following the request for clarification from the Pre-Trial Judge regarding the relationship between Mr Ayyash and the user of the “purple 231” telephone, the Prosecution states that paragraphs 3 (b) and 17 (c) of the Indictment of 8 November 2012 which refer to it are in conformity with the Decision of 25 October 2012.<sup>53</sup> In addition, the Prosecution considers that the only reasonable conclusion that may be drawn from the chain of events which preceded the attack against Mr Hariri – that is the identification of Mr Abu Adass (in December 2004), the purchase of the “red” telephones (on 4 January 2005), the disappearance of Mr Abu Adass (on

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<sup>45</sup> Prosecution Reply, para. 5.

<sup>46</sup> *Id.*, paras 4-8.

<sup>47</sup> *Id.*, paras 9-15.

<sup>48</sup> *Id.*, para. 16.

<sup>49</sup> *Id.*, para. 18.

<sup>50</sup> These allegations are reiterated at pages 7 to 11 of the Prosecution Reply.

<sup>51</sup> Prosecution Reply, paras 19-23.

<sup>52</sup> *Id.*, para. 24.

<sup>53</sup> *Id.*, paras 25-27.

16 January 2005), the purchase of the Mitsubishi van (on 25 January 2005), the preparation of the video recording (between 16 January and 14 February 2005) and the purchase of the telecard (in February 2005) – is that Mr Ayyash – as the coordinator of the surveillance of Mr Hariri and of the purchase of the Mitsubishi van – must have necessarily been informed of the progress made with regard to the preparation of the false claim of responsibility.<sup>54</sup> Moreover, Mr Ayyash and the user of the “purple 231” telephone contacted each other, on several occasions, between 23 January 2005 and 7 February 2005. Furthermore, on 6 February 2005, between 17.21 et 18.46, Mr Oneissi, Mr Sabra and the user of the “purple 231” telephone activated the same cell tower on eight occasions, which indicates that they might have been able to meet.<sup>55</sup> It is during that period that the video cassette intended for the false claim must have been prepared.<sup>56</sup> Even if there is no evidence to indicate who participated in those preparatory activities, the individuals implicated in the attack must have been informed of them.<sup>57</sup> Otherwise, they would not have been able to finalise either the attack or the plan to call the media outlets concerned and to deliver the video cassette to them.<sup>58</sup> Lastly, the telephones attributed to Mr Ayyash and to the user of the “purple 231” telephone were in the same locations during the relevant time periods, which indicates that they could have been able to communicate other than by telephone.<sup>59</sup>

## **2. Analysis of the proposed amendments**

30. Two categories should be distinguished among the proposed amendments: amendments aimed at strengthening the preciseness of the allegations made against the Accused and which are therefore not substantive, and those which might have a notable affect on the rights of the Accused.

31. The first category contains the amendments which are intended to remove the words ‘and/or’ from paragraphs 15 (c), 20 (a) and 38 of the Indictment of 8 November 2012 and replace them with the words that are highlighted in paragraphs 12, 15 and 17 of the Request of 6 February 2013.<sup>60</sup> To ensure consistency between paragraphs 15 (c) and 15 (d), the Prosecution

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<sup>54</sup> *Id.*, para. 30.

<sup>55</sup> *Id.*, paras 31-32.

<sup>56</sup> *Id.*, para. 32.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> Prosecution Reply, para. 33.

<sup>60</sup> Request of 6 February 2013, paras 9-17.

also proposes to amend paragraph 15 (d) as indicated by the highlighting in paragraph 13 of the Request of 6 February 2013. The Pre-Trial Judge considers that those amendments are intended to strengthen the preciseness of the charges against the Accused, notably with regard to the alleged preparations of the attack against Mr Hariri and of the alleged false claim of responsibility. He deems, as a consequence, that those amendments meet the criteria referred to in Rule 71 (B) of the Rules, that they are not likely to prejudice the rights of the Accused and that, therefore, they should be allowed.

32. The second category of amendments requested contains those relating to the date of the conspiracy to commit a terrorist act. The Pre-Trial Judge notes that the period included in Count 1 of the Indictment of 6 February 2013 during which the conspiracy to commit a terrorist act – namely, the assassination of Mr Hariri – was formed has been extended, since it no longer ends on 16 January 2005 but on 14 February of the same year.<sup>61</sup> However, the start of that period – that is 11 November 2004 – has been narrowed down since the words “at least” which preceded it in the Indictment of 8 November 2012 have been removed in the Indictment of 6 February 2013.<sup>62</sup>

33. The Pre-Trial Judge considers that extending the period as referred to in the previous paragraph constitutes a substantive amendment of the Indictment of 8 November 2012 which must be precisely substantiated by prima facie evidence. Thus, by way of the Decision of 6 March 2013,<sup>63</sup> the Pre-Trial Judge requested clarification from the Prosecution regarding the elements on which the proposed amendments were based and, in particular, the extension of the period referred to previously. In its Reply, the Prosecution precisely identified a series of events which took place between 16 January and 14 February 2005 inclusive.<sup>64</sup> The Pre-Trial Judge takes note that those facts were already included in the Indictment of 10 June 2011 and that the evidence on which they are based has already been submitted to him during the process for confirmation of that Indictment.<sup>65</sup> In light of this clarification, the Pre-Trial Judge considers that the amendments relating to the extension of the period during which the conspiracy to commit a terrorist act began, namely the conspiracy to assassinate Mr Hariri, does indeed rest firmly, first,

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<sup>61</sup> *Id*, paras 18-30.

<sup>62</sup> *Id.*, paras 26-27.

<sup>63</sup> Decision of 6 March 2013, paras 11-16 and Disposition.

<sup>64</sup> Prosecution Reply, para. 22.

<sup>65</sup> *Id*, paras 20-21.

on the evidence which has been submitted to him. As the acts invoked in support of these amendments and the evidence underpinning them are not new, the amendments are not, in principle, likely to prejudice the rights of the Accused in the preparation of their defence. He considers, as a consequence, that the amendments proposed in paragraphs 42, 42 (a), 42 (c), and 48 (a) to (h) of the Indictment of 6 February 2013 and which relate to Count 1 of that Indictment meet the criteria referred to in Rule 71 (B) of the Rules. They should, therefore, be allowed.

34. The second category also includes the amendments which follow from the Prosecution request to extend the period relating to the commission of the acts as accomplices to the crimes referred to in Counts 6 to 9 of the Indictment of 8 November 2012.<sup>66</sup> Indeed, according to that Indictment, this period would no longer start on 16 January 2005 but on 22 December 2004.<sup>67</sup> The Pre-Trial Judge considers that extending that period constitutes a substantive amendment to the Indictment of 8 November 2012 which must be precisely supported by prima facie evidence. As pointed out by the Prosecution, these amendments build on those of Count 1 of the Indictment of 8 November 2012.<sup>68</sup> The Pre-Trial Judge takes note that the facts in support of these amendments were already included in the Indictment of 10 June 2011 and that the evidence on which they are based has already been submitted to him during the process for confirmation.<sup>69</sup> In light of these clarifications, the Pre-Trial Judge considers that the amendments to Counts 6 to 9 proposed in the Indictment of 6 February 2013 do indeed rest firmly on the prima facie evidence that was submitted to him. As the facts invoked and the evidence in support of these amendments are not new, the amendments are not, in principle, likely to prejudice the rights of the Accused. As a consequence, the amendments proposed in paragraphs 58, 60, 62 and 64 of the Indictment of 6 February 2013 and which relate to Counts 6 to 9 of that Indictment meet the criteria referred to in Rule 71 (B) of the Rules. They should, therefore, be allowed.

35. Lastly, the Pre-Trial Judge takes note of the clarification provided by the Prosecution regarding the amendments proposed in paragraphs 3 (b) and 17 (c) of the Indictment of 8 November 2012 and which are reproduced in the Indictment of 6 February 2013 on the subject of the alleged communications between Mr Ayyash and the user of the “purple 231” telephone

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<sup>66</sup> Request of 6 February 2013, paras 31-32.

<sup>67</sup> *Ibid.*

<sup>68</sup> Request of 6 February 2013, para. 31.

<sup>69</sup> Prosecution Reply, para. 24.

with respect to the alleged false claim of responsibility. He notes that the Prosecution confirms that these two persons exchanged no telephone calls with one another between 22 December 2004 and 17 January 2005 – the alleged period during which Mr Abu Addass was identified and recruited – and 14 February 2005 when the alleged false claim of responsibility was made.<sup>70</sup> The Pre-Trial Judge observes that these amendments are based, in reality, on inferences connected to the role of Mr Ayyash as coordinator for the surveillance of Mr Hariri and the purchase of the Mitsubishi van, and, as such, the need for him to be informed of the progress of the actions connected with the alleged false claim of responsibility. This would appear to be substantiated by communications exchanged in particular between Mr Ayyash and the user of the “purple 231” telephone between 23 January 2005 and 7 February 2005 and by the fact that they could have been at the same location at crucial times.<sup>71</sup> The Pre-Trial Judge considers that these amendments are founded, first, in conformity with the criteria required to confirm an indictment recalled in the Decision of 28 June 2011 to the extent that the reasoning of the Prosecution is based on assumptions that are sufficiently credible. The Pre-Trial Judge nevertheless recalls that in this context, his powers are limited. He cannot in any way act as a substitute for the judges dealing with the substance of the case, who alone bear the responsibility of determining whether, at the end of adversarial proceedings, the evidence has been established against the Accused and whether they are guilty, beyond any reasonable doubt, of the crimes imputed to them. At this stage of the proceedings, the Pre-Trial Judge’s sole mission is to review the proposed amendments of the Indictment of 10 June 2011 in the light of the evidence gathered and submitted by the Prosecution to determine whether, first, proceedings can be brought against the Accused taking into account these amendments.<sup>72</sup> In this regard, the Pre-Trial Judge considers that it is not necessary to reconsider these amendments which have already been approved in the Decision of 25 October 2012.<sup>73</sup>

36. The Pre-Trial Judge considers, as a consequence, that the Request of 6 February 2013 is founded.

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<sup>70</sup> Order of 6 March 2013, para. 15.

<sup>71</sup> Prosecution Reply, paras 30-33.

<sup>72</sup> Decision of 28 June 2011, para. 26.

<sup>73</sup> Decision of 25 October 2012, paras 34-35.

### E. The arrest warrants

37. On 28 June 2011, the Pre-Trial Judge issued arrest warrants including transfer and detention orders against the Accused.<sup>74</sup> On 8 July 2011, he issued international arrest warrants including transfer and detention orders against the same Accused.<sup>75</sup>

38. In the Request of 8 November 2012, the Prosecution requests the Pre-Trial Judge to adapt those arrest warrants with the amendments introduced in the Indictment of 8 November 2012.<sup>76</sup>

39. Insofar as the Indictment of 8 November 2012 has been dismissed,<sup>77</sup> the Pre-Trial Judge considers that it is not necessary to rule on that request.

### F. The requirements of confidentiality

40. As it did for the Indictment of 10 June 2011, the Prosecution seeks redaction of the public version of the Indictment of 8 November 2012 in order to ensure the proper conduct of the ongoing investigations and to secure the protection of the witnesses.

41. Insofar as the Indictment of 8 November 2012<sup>78</sup> has been dismissed, the Pre-Trial Judge considers that it is not necessary to rule on that request.

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<sup>74</sup> STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I, Warrant to Arrest Mr Salim Jamil Ayyash including Transfer and Detention Order, 28 June 2011; STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I, Warrant to Arrest Mr Mustafa Amine Badreddine including Transfer and Detention Order, 28 June 2011; STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I, Warrant to Arrest Mr Hussein Hassan Oneissi including Transfer and Detention Order, 28 June 2011; STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I, Warrant to Arrest Mr Assad Hassan Sabra including Transfer and Detention Order, 28 June 2011.

<sup>75</sup> STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I, International Warrant to Arrest Mr Salim Jamil Ayyash including Transfer and Detention Request, 8 July 2011; STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I, International Warrant to Arrest Mr Mustafa Amine Badreddine including Transfer and Detention Request, 8 July 2011; STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I, International Warrant to Arrest Mr Hussein Hassan Oneissi including Transfer and Detention Request, 8 July 2011; STL, *The Prosecutor v Ayyash et al.*, Case No. STL-11-01/I, International Warrant to Arrest Mr Assad Hassan Sabra including Transfer and Detention Request, 8 July 2011.

<sup>76</sup> Request of 8 November 2012, paras 11 c) and d).

<sup>77</sup> Cf. para. 22 above.

<sup>78</sup> *Ibid*

**IV. Disposition**

**FOR THESE REASONS,**

Pursuant to Rules 71 (A) (ii) and (B) and 74 of the Rules,

**THE PRE-TRIAL JUDGE,**

**GRANTS** the Request of 8 November 2012 concerning the amendments to the Indictment of 10 June 2011;

**DECLARES** the Request of 8 November 2012 unfounded in all other respects;

**DISMISSES** the Indictment of 8 November 2012;

**GRANTS** the Request of 6 February 2013;

**AUTHORISES** the amendments to the Indictment of 10 June 2011 as they appear in the Indictment of 6 February 2013;

**DECLARES** that the Indictment of 6 February 2013 annuls and replaces the Indictment of 10 June 2011; and

**ORDERS** the Prosecution to file a signed version of the Indictment of 6 February 2013 by 17 April 2013 at 16.00 hrs. at the latest.

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

Leidschendam, 12 April 2013

[stamp]

[signature]

Daniel Fransen  
Pre-Trial Judge

