



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: 12 June 2018

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

ORDER RESCHEDULING FINAL TRIAL BRIEFS AND CLOSING ARGUMENTS

Office of the Prosecutor:
Mr Norman Farrell & Mr Nigel Povoas

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 Youssef 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 &
Ms Sarah Bafadhel



Procedural background

1. At the close of a case the Parties and the victims participating in the proceedings may file a written submission, termed a ‘final trial brief’, followed by court-room oral ‘closing arguments’. Rule 147 (B) of the Special Tribunal’s Rules of Procedure and Evidence ‘Closing Arguments’ provides that the final trial brief must be filed no later than five days before closing arguments.

2. A Practice Direction regulates the size of the briefs, permitting each Party to file a final trial brief of 30,000 words, which is generally around 100 pages in length.¹ A chamber—exercising its discretion—may vary this and permit the Parties and Legal Representatives of Victims to file longer briefs. The Trial Chamber has large discretion in timetabling the filing of the briefs and scheduling of closing arguments. Effective judicial management, however, warrants a chamber consulting the Parties and the Legal Representatives of Victims before issuing scheduling orders. And scheduling orders may, of course, be rescinded, varied or replaced, if changing circumstances require this.

3. And circumstances have indeed changed since the Trial Chamber on 11 April 2018—after first hearing from the Parties and Legal Representatives of Victims in a Rule 129 Pre-Defence Conference on 22 March 2018²—issued a scheduling order ordering them to file their final trial briefs on 4 June 2018, with any responses by 18 June and scheduling oral closing arguments for the weeks of Monday 25 June to Friday 6 July. The Trial Chamber also permitted the Prosecution and Defence, on their respective applications, to file final trial briefs—for the Prosecution of 150,000 words (that is of around 500 pages) and for counsel for each Accused to exceed the 30,000 word limit.³

4. In determining that schedule, the Trial Chamber considered that it had attempted to guide the Parties in case management meetings over the last year to prepare themselves to file their final briefs within a reasonable period after the close of the presentation of the evidence.

¹ See STL/PD/2010/01/Rev.2, Practice Direction on the Filing of Documents before the Special Tribunal for Lebanon, 15 January 2010, Article 5 (1) (f).

² Rule 129 provides that before the Defence case starts, the Trial Chamber shall hold Pre-Defence Conferences as needed; it may give directions necessary to ensure a fair, impartial and expeditious trial, including: (i) calling upon the Defence to shorten the estimated length of the examination-in-chief for some or all witnesses; (ii) determining the number of witnesses the Defence may call; and (iii) determining the time available to the Defence for the presentation of evidence.

³ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, transcript of 22 March 2018, pp 40-50; F3623, Scheduling Order for Final Trial Briefs and Closing Arguments under Rule 147, 11 April 2018, para. 8. See Practice Direction on Filing of Documents, Article 5 (1) (f). See also F3608, Scheduling Order for Hearing the Oneissi Defence Case Between 10 and 20 April 2018, 23 March 2018, para. 27.

It also considered that filing the final trial briefs simultaneously would expedite the proceedings, while allowing the Parties and the participating victims to respond to the other submissions before oral closing arguments would alleviate any procedural prejudice.⁴

5. When the Trial Chamber issued this scheduling order, it expected the remaining evidence in the case—namely, that of the Defence of the Accused, Mr Hussein Hassan Oneissi, and the testimony of one witness the Trial Chamber was intending to call itself under Rule 165, Mr Michael Taylor—to have concluded some weeks in advance of the date specified for filing the final trial briefs of 4 June. Mr Taylor's evidence was then scheduled for 23 April and the Oneissi Defence case for the weeks commencing 9 and 16 April.⁵

6. Four relevant factors resulted in the Trial Chamber, on 14 May, suspending the scheduling order. These are (1) the effective suspension of the proceedings between 13 April and 4 May due to an application by the Oneissi Defence to disqualify the three Trial Chamber judges,⁶ which (2) necessitated rescheduling Mr Taylor's evidence from 23 April, due to his professional unavailability, to 25 June, followed by (3) the Oneissi Defence calling a witness, Mr Jamil El-Sayyed, between 5 and 7 June and finally, (4) a joint application by the Defence filed on 12 April, partially joined by the Prosecution,⁷ asking the Trial Chamber to reconsider its scheduling order of 11 April.⁸ In suspending this order, the Trial Chamber stated that it would consider further submissions on scheduling final trial briefs and closing arguments after receiving further information on the scheduling of these witnesses.⁹

7. The Trial Chamber thus has to issue a revised scheduling order for final trial briefs and closing arguments. The issues for resolution are timetabling, the sequence for filing briefs—

⁴ Scheduling Order of 11 April 2018, paras 6-8.

⁵ F3646, Decision Partly Granting Sabra Defence Application and Ordering the Attendance of a Former Prosecution Investigator to Testify under Rule 165, 13 April 2018 (distributed on 7 May 2018); Scheduling Order of 23 March 2018, para. 19.

⁶ See STL-11-01/T/PRES, F3628, Oneissi Defence Rule 25 Motion for the Disqualification and Withdrawal of Presiding Judge David Re, Judge Janet Nosworthy, and Judge Micheline Braidy, 12 April 2018 (confidential with confidential annexes; a public redacted version of the application was filed on the same day); STL-11-01/T/OTH/R25, F3645, Decision on Oneissi Defence Rule 25 Motion for the Disqualification and Withdrawal of Presiding Judge David Re, Judge Janet Nosworthy, and Judge Micheline Brady, 4 May 2018.

⁷ In which the Prosecution also sought clarification of the word length of the Defence briefs.

⁸ STL-11-01/T/TC, F3627, Joint Defence Request for Reconsideration of the Scheduling Order for Final Trial Briefs and Closing Arguments under Rule 147, 12 April 2018; F3636, Prosecution Motion for Reconsideration of the Order of 11 April 2018; Partial Joinder and Response to the Joint Defence Request for Reconsideration, and Motion for Clarification, 20 April 2018; F3647, Requête de la Défense en Réexamen de l'Ordonnance de la Chambre portant calendrier pour les Mémoires en clôture et Plaidoiries finales en date du 11 avril 2018, 7 May 2018 (confidential); F3656, Observations de la Défense en Réponse à l'Ordonnance portant calendrier délivrée par le Juge Rapporteur le 8 mai 2018, 10 May 2018.

⁹ F3664, Order Suspending the Scheduling Order for Final Trial Briefs and Closing Arguments, 14 May 2018.

whether they should be consecutive, i.e. the Prosecution and Legal Representatives followed by the Defence, or simultaneous, i.e. each filed at the same time—and the word limits for the Defence briefs and that of the Legal Representatives.

Submissions

8. The Prosecution, in its initial submission and its application for partial reconsideration, maintains that all Parties should file their briefs simultaneously,¹⁰ whereas the Defence¹¹ and Legal Representatives of Victims¹² submit that the Defence briefs should follow the Prosecution's. The Defence want four weeks to respond to the Prosecution brief. The Prosecution maintains that it should not be required to file its brief before 27 July and no earlier than one month after the evidence has closed. It wants four weeks between the filing of the Defence final trial briefs, if allocated the standard 30,000 words, and closing arguments. The Defence and the Legal Representatives of Victims also submit that the Trial Chamber should not even issue a scheduling order until it has finished receiving all evidence in the case. Counsel for the four Accused now seek 100,000 words for each of their final trial briefs. The Legal Representatives of Victims want 150 pages for their final trial brief—which equates to around 45,000 words.¹³

Application for reconsideration

9. The Parties have sought reconsideration of the scheduling order under Rule 140 by which a chamber may reconsider *proprio motu*, or at the request of a Party, a decision, other than a judgment or sentence, if necessary to avoid injustice. However, given the changed circumstances since the Trial Chamber issued its scheduling order on 11 April, a replacement order is required rather than reconsideration of the original.

10. The Trial Chamber has carefully reviewed the arguments of the Parties and the Legal Representatives of Victims and, in light of the changed timetabling of the evidence, will therefore issue a new scheduling order. The Trial Chamber emphasises that, although it has

¹⁰ Prosecution response and motion for clarification, paras 3, 17, 22 (iii).

¹¹ Joint Defence motion, paras 4, 27-30, 32-35, 37 (b); Oneissi Defence motion, paras 15-27.

¹² F3626, Observations of the Legal Representative of Victims to the Prosecution Submission for All Final Trial Briefs to be Filed No Earlier Than 27 July 2018, 11 April 2018, paras 16-19.

¹³ Joint Defence motion, paras 33, 37 (b). Upon the request of the Trial Chamber, the Parties and participating victims also provided further views on the final trial briefs and closing arguments, including specifically on the maximum length to be allocated to the Defence and participating victims for their final written submissions, via email to the Trial Chamber's senior legal officer on 11 June 2018.

sought submissions and has consulted the Parties and participating victims, it has discretion over the timing and modalities of the closing written and oral submissions.

Close of the presentation of evidence

11. The Trial Chamber intends to complete the receiving of evidence in the trial in the week commencing Monday 25 June, after hearing Mr Taylor's evidence.¹⁴ At this advanced stage of the trial—and especially given the original scheduling order of 11 April (two months ago)—the Parties and the Legal Representatives of Victims should be ready to file their final trial briefs shortly, subject to any adjustments required by any outstanding evidence.

12. It is therefore reasonable to order the filing of the Prosecution's and participating victims' final trial briefs within a few weeks of the close of the evidence in the week of 25 June.

Consecutive filing of briefs

13. To ensure more focused briefs and closing arguments—and, as the Legal Representatives of Victims has argued, to achieve better judicial economy—the Trial Chamber has decided that the Prosecution should file its final trial brief first, followed by the Defence four weeks later. The Legal Representatives of Victims should file their brief on the same date as the Prosecution.

Closing arguments

14. Oral closing arguments will begin two weeks after the Trial Chamber receives the Defence final trial briefs. The Trial Chamber is of the view that this is sufficient time, in the circumstances, for the Parties and the Legal Representatives of Victims to prepare their focused and succinct legal and factual arguments.

Word limits for Defence and Legal Representatives of Victims final trial briefs

15. The Trial Chamber has already allowed the Defence to exceed the 30,000 word limit permitted in the Practice Direction. Counsel for the four Accused, however, each now seek 100,000 words—which is around 330 pages. In the Trial Chamber's view, this is excessive. The Prosecution must prove its case against four Accused, and its case also involves the role

¹⁴ On 12 June, the Trial Chamber denied an application by the Prosecution to reconsider calling Mr Taylor to testify under Rule 165. F3686, Decision Dismissing the Prosecution Motion for Reconsideration of the Trial Chamber Decision under Rule 165 to Call Mr Michael Taylor, 12 June 2018.

of a former Accused, Mr Mustafa Amine Badreddine. The Defence for each Accused, however, need only respond to the Prosecution case and present their own defence.

16. The Trial Chamber will therefore permit the Defence of each Accused to file a final trial brief of up to 60,000 words, which is around 200 pages. The Legal Representatives of Victims may file a final trial brief of up to 45,000 words (around 150 pages).

Weight to be given to evidence called by the participating victims

17. Finally, during the trial, the Trial Chamber has several times informed the Parties that it would seek submissions on the weight that could be given to certain evidence, notably the evidence the Trial Chamber permitted the Legal Representatives of Victims to call.¹⁵ The Parties and the Legal Representatives of Victims should address this in their final trial briefs.

Scheduling order

18. As the Trial Chamber expects to finish receiving evidence in the trial in the week commencing Monday 25 June 2018, it orders the Parties and participating victims to file their final trial briefs according to the following schedule:


- Prosecution and Legal Representatives of Victims: **Monday 16 July 2018**; and
- Counsel for the Accused: **Monday 13 August 2018**.

The Trial Chamber will then hear oral closing arguments in the weeks of **Monday 27 August to Friday 7 September 2018**.

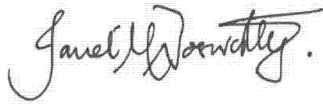
¹⁵ See F3456, Decision Admitting Documentary Evidence on the Legal Representatives of Victims' Application, 4 December 2017, para. 33; F3312, Decision Permitting Professor Doctor Rianne Letschert to Give Opinion Evidence and Admitting Her Report into Evidence, 7 September 2017, para. 33; F3309, Decision Admitting into Evidence 18 Witness Statements under Rules 155 and 158, and Reasons for Admitting Two Witness Statements of Participating Victims, 5 September 2017, para. 16; F3260, Decision on the Legal Representatives of Victims' Application to Call Evidence, Schedule the Presentation of Evidence and Directions on Disclosure Obligations, 31 July 2017, paras 77, 83.

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

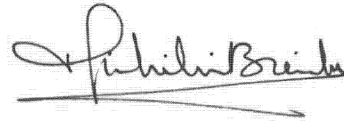
Leidschendam,
The Netherlands
12 June 2018



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

